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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 534

OKLAHOMA FARM BUREAU and LEWIS H. MUNN,
Appellants,

VERSUS

HARRY R. MOSS, ET AL.,
Appellees.

APPEAL FROM A THREE-JUDGE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

JURISDICTIONAL STATEMENT OF OKLAHOMA FARM BUREAU AND LEWIS H. MUNN, APPELLANTS

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October, 1963.

UTTERBACK TYPESETTING CO., 13 SO. WALKER, OKLAHOMA CITY, PH. CE 8-8780

SUBJECT INDEX

Statement 1

Opinions Below 2

Grounds for Appellate Jurisdiction 2

Questions Presented by This Appeal 6

Statement of the Case 8

Reasons for Plenary Consideration 12

Conclusion 14

AUTHORITIES CITED

CASES:

Baker v. Carr, 369 U.S. 186, 82 S. Ct. 691 ..... 5, 13

Florida Lime and Avacado Growers, Inc. v. Jacobson (Calif. 1960), 362 U.S. 73, 80 S.Ct. 568, 4 L. Ed. 2d 568 5

Gray v. Sanders, 270 U.S. 921 5

Kesler v. Department of Public Safety, 369 U.S. 153 5

Marbury v. Madison, 1 Cr. 137, 2 L.Ed. 30 (1803) 14

Oklahoma Gas and Electric Company v. Oklahoma Packing Company, 292 U.S. 386, 54 S.Ct. 732, 78 L.Ed. 1318 5

Pelmeadow Fire Insurance Co. v. Conn, 272 U.S. 295 5

Radio Corporation of America v. U. S. (D.C. Ill. 1950), 95 F. Supp. 660, 341 U.S. 412, 71 S. Ct. 806, 95 L.Ed. 1062 5

INDEX CONTINUED PAGE

CONSTITUTIONAL PROVISIONS:

United States Constitution:
Equal Protection Clause of Amendment XIV ... 2, 3, 6, 8

Oklahoma Constitution:
Art. V, Secs. 1, 2 ... 3, 9
Art. V, Secs. 9, 9(a), 9(b), 10 ... 3

STATUTES:

House Resolution No. 4, 29th (1963) Oklahoma Legislature ... 3
House Joint Resolution No. 8, 29th (1963) Oklahoma Legislature ... 3, 10
House Bill 586, 29th (1963) Oklahoma Legislature ... 3, 10

Senate Joint Resolution No. 4 ... 10, 11

14 O.S. 1961, Secs. 9-72 ... 3
14 O.S. 1961, Secs. 9-77, 99, 100m ... 4
14 O.S. 1961, Secs. 97-100 ... 3

Enabling Act, Sec. 3, June 6, 1906, 34 Stat. 267-268 ... 8

28 U.S.C., Sec. 1253 ... 4-5
28 U.S.C., Sec. 2281 ... 4

APPENDIX

Appendix No. I:

Memorandum of Facts and Conclusions of Law and Interlocutory Decree on Motion for Interlocutory Relief ... i

Appendix No. II:

Dissenting Opinion of the Honorable Ross Rizley, April 30, 1962 ... xii

INDEX CONTINUED PAGE

Appendix No. III:

Interlocutory Decree of June 19, 1962 xxv

Appendix No. IV:

Further Statement of Facts and Law on the Merits relating to Interlocutory Decree of June 19, 1962.. xxvi

Appendix No. V:

Decree of July 31, 1962 xxxviii

Appendix No. VI:

Dissenting Opinion of the Honorable Ross Rizley relating to Decree of July 31 xlii

Appendix No. VII:

Memorandum of Decision and Final Judgment, dated July 17, 1963 liii

Appendix No. VIII:

Article V, Secs. 9, 9(a), 9(b) and 10, Oklahoma Constitution (Senatorial Districts) lxxx

Appendix No. IX:

Implementing Statutes — (Senate) — Title 14, O.S. 1961, Secs. 9-72, Inclusive lxxxiv

Appendix No. X:

Implementing Statutes — (Representatives) — Title 14, O.S. 1961, Secs. 97-100 xciv

Appendix No. XI:

Article V, Secs. 1 and 2, Oklahoma Constitution— (Initiative and Referendum) — Reservation of Power civ

INDEX CONTINUED PAGE

Appendix No. XII:

House Bill 586, 29th (1963) Oklahoma Legislature cvii

Appendix No. XIII:

House Resolution No. 8, 29th (1963) Oklahoma Legislature cxiii

Appendix No. XIV:

House Resolution No. 4, 29th (1963) Oklahoma Legislature cxxi

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JURISDICTIONAL STATEMENT OF OKLAHOMA FARM BUREAU AND LEWIS H. MUNN, APPELLANTS

This jurisdictional statement is filed by the appellants, Oklahoma Farm Bureau and Lewis H. Munn, concurrently with the filing of the original Record in this cause which was requested by the Attorney-General of the State of Oklahoma, and to which Record, reference is hereby made, pursuant to Rule 13 and Rule 15 of this Court.

The appeal is taken from a Decree of a three-judge court convened in the United States District Court for the

Western District of Oklahoma, which relates to reapportionment of the Legislative Branch of the Oklahoma State Government.

OPINIONS BELOW

Appendix No. I—Memorandum of Facts and Conclusion of Law and Interlocutory Decree on Motion for Interlocutory Relief.

Appendix No. II—Dissenting opinion of the Honorable Ross Rizley, April 30, 1962.

Appendix No. III—Interlocutory Decree of June 19, 1962.

Appendix No. IV—Further Statement of Facts and law on the merits relating to Interlocutory Decree of June 19, 1962.

Appendix No. V—Decree of July 31, 1962.

Appendix No. VI—Dissenting opinion of the Honorable Ross Rizley relating to Decree of July 31.

Appendix No. VII—Memorandum of Decision and Final Judgment, dated July 17, 1963.

GROUNDS FOR APPELLATE JURISDICTION

This is a proceeding under which the complainant, a resident of Oklahoma City and on behalf of others similarly situated, seeks judicial reapportionment, and an injunction against certain State officers to restrain their performance of any official acts pursuant to current Legislative enactment. Relying upon the Fourteenth Amendment to the Constitution, he attacks the validity of the reapportionment

formula under which members of the Oklahoma Legislature are now elected. He alleges in substance that such apportionment is in violation of the Fourteenth Amendment to the Federal Constitution, that he and those similarly situated are deprived of an equal vote for their representatives, and that they have no adequate remedy at law.

The applicable statutes and the provisions of the Oklahoma Constitution involved are as follows:

Appendix No. VIII—Article V, Sections 9, 9(a), 9(b) and 10, Oklahoma Constitution (Senatorial Districts).

Appendix No. IX—Implementing Statutes—(Senate)—Title 14, O.S. 1961, Sections 9 to 72, inclusive.

Appendix No. X—Implementing Statutes—(Representatives)—Title 14, O.S. 1961, Sections 97-100.

Appendix No. XI—Article V, Sections 1 and 2, Oklahoma Constitution—(Initiative and Referendum) —Reservation of Power.

Appendix No. XII—House Bill 586, 29th (1963) Oklahoma Legislature.

Appendix No. XIII—House Resolution No. 8, 29th (1963) Oklahoma Legislature.

Appendix No. XIV—House Resolution No. 4, 29th (1963) Oklahoma Legislature.

In this action, these appellants, Oklahoma Farm Bureau and Lewis H. Munn, were admitted as intervenors, and filed their Answer (R. 116, 127). On June 19, 1962, pursuant to hearing, the court by Interlocutory Decree held that the existing statutes of the State of Oklahoma relating

to apportionment (Title 14, §§ 9-77, incl., and §§ 99 and 100m, O.S. 1961) were invidiously discriminatory against the plaintiff and his class, and were null and void (App. III). The cause was continued until July 31, 1962, for the effectuation of appropriate relief and final judgment. On July 31, 1962, the matter came further on for hearing and after said hearing, the court entered its decree which was filed August 3, 1962 (R. 141) (Appendix IV). From this Decree, your appellants duly filed Notice of Appeal in the United States District Court of the Western District of Oklahoma on August 29, 1962. A Jurisdictional Statement was filed by these appellants, but the Supreme Court (No. 689) declined to entertain the appeal, and sustained a motion of the appellees to dismiss. Thereafter, and on July 17, 1963, the Lower Court entered its Final Judgment (Appendix No. XII). The effect of this Order was to decree a complete reapportionment of each of the two Houses of the Oklahoma Legislature; and to enjoin the conduct of future elections for legislative offices, except in accordance with such apportionment. The Decree embodied a permanent injunction against the State Election Board, which was designed to effect a reapportionment of *both* Houses of the Legislature based substantially on the factor of population in accordance with the Federal census.

Notice of appeal was filed by these appellants in the United States District Court for the Western District of Oklahoma on August 14, 1963.

It is therefcre believed that pursuant to a proceeding held under Title 28, U.S.C., § 2281, that Title 28, § 1253,

U.S.C., confers on this Court jurisdiction to consider this appeal:

> *"Direct appeals from decisions of Three Judge Courts.* Except as otherwise provided by law, any party may appeal to the Supreme Court from an order, granting, or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any act of Congress to be heard and determined by a District Court of three Judges."

Representative cases believed to sustain the jurisdiction of this Court are:

—*Baker* v. *Carr*, 369 U.S. 186, 82 S.Ct. 691;

Oklahoma Gas and Electric Company v. *Oklahoma Packing Company*, 292 U.S. 386, 54 S.Ct. 732, 78 L.Ed. 1318;

Florida Lime and Avacado Growers, Inc. v. *Jacobson* (Calif. 1960), 362 U.S. 73, 80 S.Ct. 568, 4 L.Ed.2d 568;

Radio Corporation of America v. *U. S.* (D.C. Ill. 1950), 95 F. Supp. 660, 341 U.S. 412, 71 S. Ct. 806, 95 L.Ed. 1062;

Gray v. *Sanders*, 270 U.S. 921;

Kesler v. *Department of Public Safety*, 369 U.S. 153;

Pelmeadow Fire Insurance Co. v. *Conn*, 272 U.S. 295.

QUESTIONS PRESENTED BY THIS APPEAL

(1) Does a Federal Court have the authority, the jurisdiction, and the power, to invade the function of the Legislative body of a sovereign State, and to arbitrarily assign boundaries and numerical representatives of political districts for the nomination and election of State Senators and Representatives?

(2) Where the power to amend a State Constitution is vested in and reserved to the citizens of a State through the Initiative and Referendum, does the Federal Court have the right to arbitrarily amend such State Constitution?

(3) Where the Constitution of a State has been approved on its admission to the Union, by the Federal Government, as providing for a republican form of government, and as providing an apportionment procedure not in conflict with the 14th Amendment, and which further provides for constitutional amendment by the Initiative and Referendum, does the Federal Court thereafter have the power to substitute its own arbitrary amendment to such Constitution by:

(a) Declaring that the Section of such State Constitution, limiting House representation from any county to the number of seven (7), to be void, and must be disregarded, even though representation in the Senate is based on population; and

(b) Restricting membership in the State Senate to forty-four (44) members, thereby ignoring the flexibility clause of the State Constitution which would permit additional Senators in more populated counties?

(4) Where the parties complaining of alleged malapportionment in the State Senate and House, con-

stitute, according to their own pleadings and the evidence, a majority of the voters in the State, and, consequently, possess the legal and political power, through the Initiative and Referendum, to amend the Constitution, are they not precluded and estopped from procuring relief from the Federal Court, when they have not exhausted their legal and political remedies, afforded by the State?

(5) Should the Court, after announcing in its decree, that "it will" . . . "do nothing to interfere with the right of the people to speak freely"—on Enrolled Joint Senate Resolution No. 4, which has been referred to the people, and embraces proposed amendments to the Constitution relating to apportionment, then proceed to make an arbitrary apportionment wholly at variance with the proposed amendments?

(6) Is not the Court inviting a tragic and unnecessary clash between Federal and State, by peremptorily decreeing political boundaries now, for four legislative periods, while the strong possibility exists that under the mandatory reference to the people, Joint Senate Resolution No. 4 providing an entirely different method of apportionment, may be adopted in July, 1964, and be implemented by Legislative or Commission action in 1965?

(7) Does the Court have the political authority and power to decree the apportionment of *both* Houses of the Legislature solely on the basis of population, and to ignore such other compelling factors as geography, electoral convenience, economic and social cohesions or divergencies, involving such separate trade and business interests in various parts of the State as oil, agriculture, transportation, communication, other industries, and welfare segments?

STATEMENT OF THE CASE

Mr. Moss of Oklahoma City in his Complaint, charges that the Government of Oklahoma is not republican in form, and that he and those similarly situated residing in the "congested areas" of Oklahoma, are deprived of equal protection of the laws, by reason of failure of the Legislature to apportion in accordance with the Constitution (R. 1).

Plaintiff does not complain of the constitutional formula. He merely complains that it has not been followed, with the result that Oklahoma presently so he contends, does not have a republican form of government, and that he is denied the equal protection of the laws.

Section 3 of the Enabling Act passed by Congress June 6, 1906, 34 Stat. 267-268, authorized the adoption of a Constitution by the citizens of the Territory of Oklahoma, and the Indian Territory, and thereupon to become the State of Oklahoma.

Said Act further provided:

> "The Constitution shall be republican in form, and make no distinction in civil or political rights on account of race or color, and shall not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence."

Pursuant to that Enabling Act, a Constitutional Convention was called in Oklahoma, and on November 21, 1906, the first act of the convention was to adopte the Constitution of the United States (which included of course, the Fourteenth Amendment) and to accept the Enabling Act.

By the Enabling Act, the President was authorized by Congress to determine whether or not the Oklahoma Constitution was in compliance with the Federal Constitution, and the other requirements of such Act; and if so, to issue a proclamation approving such Constitution and admitting the State of Oklahoma into the Union.

The Constitution provided for by the Enabling Act was written at the Oklahoma Constitutional Convention; it was submitted to a vote of the people of Oklahoma, and by them adopted. It was also submitted to the President of the United States, The Honorable Theodore Roosevelt, and he, in turn, on behalf of the United States, found that it did comply with the requirements of the Enabling Act; and as a part of his proclamation issued November 16, 1907, stated:

> "And, whereas, it appears that the said Constitution and government of the proposed State of Oklahoma are *republican in form,* and that said Constitution makes no distinction in civil or political rights on account of race or color, *and is not repugnant to the Constitution of the United States,* or to the principles of the Declaration of Independence, and that it contains all of the six provisions expressly required by Section 3 of said Act [the Enabling Act] to be therein contained: * * *." (Emphasis ours.)

One of the provisions of the Oklahoma Constitution was embraced in Article V, Sections 1 and 2, O.S. 1961 (Appendix XI), under which the people reserved the right to amend the Constitution by the Initiative, and the Referendum.

At the time of the rendition of the final judgment by the Court on July 17, 1963, there were then in effect three

Legislative enactments which had been passed by the Legislature subsequent to the interlocutory decree of August 3, 1962:

House Bill No. 586 (App. XII);
Senate Joint Resolution No. 8 (App. XIII);
Senate Joint Resolution No. 4 (App. XIV).

The first two of these documents would have become effective ninety days after adjournment of the Legislature, or September 12, 1963.

House Bill No. 586 apportioned the House of Representatives for the forthcoming four bi-annual Legislative sessions, commencing in 1965. The principal difference between this legislative enactment and the decision of the Court was that the act followed the Constitution with reference to the seven (7) member limit as to members of the Legislature to be elected from any one county. Concerning this provision, the Legislature followed the Oklahoma Constitution, but did not comply with the guide lines laid down by the Court. [In the Court Decree, Oklahoma County was granted nineteen (19) Representatives and Tulsa County, fifteen (15).] In addition, House Bill No. 586 contained a provision with reference to floatorial Representatives.

Senate Joint Resolution No. 8, which passed both Houses, and was signed by the Governor, became effective September 12, 1963 [except to any extent it may be contravened by the final decision of this Court, and except to the extent that it may be modified by SJR 4 at the election in May, 1964.]

Senate Joint Resolution No. 8 apportioned the State into forty-seven (47) Senatorial Districts, each to elect one Senator. Oklahoma County was divided into four (4) districts, and Tulsa County into three (3). The balance of the State was divided into forty (40) districts, each comprising from one to four counties. Pursuant to the provisions of the Oklahoma Constitution, a standard of "permanent population" was adopted, rather than census population for the purpose of determining allocations.

In the meantime (and before entry of the Court's final decree), the Legislature has also submitted for a vote of the people, an amendment to the Oklahoma Constitution (Senate Joint Resolution No. 4) (App. XIV), which embraces an entirely new apportionment formula. It will be voted on in May of 1964, and if adopted, will create forty-eight (48) Senatorial Districts each electing one Senator, consisting of nineteen (19) one-county districts and twenty-nine (29) two-county districts. It will grant at least one Representative to each county; and will require progressively more population per Representative as the number of Representatives allotted to any one county increases.

The formula which the Court in its decree directs the Legislature to follow, constitutes a radical departure from the present constitutional formula of Oklahoma, in that:

(1) It apportions *both* Houses on the basis of population;

(2) It ignores the constitutional limit of seven (7) members of the House of Representatives from any one county; and

(3) It ignores the flexibility clause of the Constitution and places an arbitrary limit of 44 members in the Senate.

REASONS FOR PLENARY CONSIDERATION

This case is of great moment and importance to the State of Oklahoma.

It involves the very serious and substantial question as to whether or not a Federal Court may intervene to alleviate an alleged political injustice to the majority of the citizens of a State who have available to them the legal remedy of the Initiative or Referendum guaranteed to them by the Constitution of that State.

The question becomes more significant when, from the pleading it appears, that the plaintiff is representing himself "and all those similarly situated," and where he defines himself and those similarly situated as having Representatives who have only 1/10th of the voting power of rural Representatives. Conversely, this means that the plaintiff and those similarly situated represent and constitute ten times the voting population of the remaining inhabitants of the State.

Consequently, it is obvious that the remedy of the Initiative is not a remote or inadequate measure of relief which is available to them.

If the constitutional formula ought to be changed, they are in a position to change it by orderly process and by methods provided by the Oklahoma Constitution. They are not compelled to resort to the extraordinary remedy of

seeking constitutional change by judicial fiat. Under such circumstances, we feel the Court should not permit itself, and, in fact, has no authority, or justification to allow itself to be burdened with the task of amending the State Constitution.

The plaintiff and his associates represent a majority of the voters of the State of Oklahoma. If the Constitution requires amendment, they are in a position to accomplish it. They do not require the gratuitous assistance of the Federal Court.

As very cogently stated by MR. JUSTICE CLARK in his concurring opinion in the case of *Baker* v. *Carr*, 369 U.S. 186, 82 S.Ct. 691:

> "Although I find that Tennessee apportionment statute offends the equal protection clause, I would not consider intervention by this court into so delicate a field, if there were any other relief available to the people of Tennessee. But the majority of the people of Tennessee have no 'practical opportunities for exerting their political weight at the polls,' to correct the existing 'invidious discrimination.' *Tennessee has no Initiative and Referendum.*"

The great Thomas Jefferson, in a letter to Spencer Roane of Virginia, September 6, 1819, stated:

> "Independence can be trusted nowhere but with the people."

If the people of Oklahoma, the majority of whom the plaintiff claims to represent, feel there has been an impingement of their independence, and desire a change in the apportionment formula of Oklahoma, they will have an

opportunity to effectuate that change in the primary election in May of 1964. If they do not prefer the formula set forth in Senate Joint Resolution No. 4, they may, of course, initiate and adopt their own formula.

In this case, it would appear the Court has reached far beyond the powers ever envisioned for it by even the greatest of advocates for a strong judiciary, The Honorable John Marshall.

CHIEF JUSTICE MARSHALL stated in *Marbury* v. *Madison*, 1 Cr. 137, 2 L.Ed. 60 (1803):

> "It is emphatically the province and the duty of the Judicial Department * * * and the very essence of Judicial duty to say *what the law is*." (Emphasis ours.)

Justice Marshall, to our knowledge, never went so far as to say what the law *ought to be*.

For these among other reasons we believe the questions presented here are substantial, that they require plenary consideration, with briefs on the merits and oral argument for their resolution.

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October, 1963.

APPENDIX

APPENDIX I

Before MURRAH, Circuit Judge, and RIZLEY and DAUGHERTY, District Judges.

MURRAH, Circuit Judge.

MEMORANDUM OF FACTS AND CONCLUSION OF LAW ON MOTION FOR INTERLOCUTORY RELIEF

Endorsed: Filed Apr. 30, 1962
Vera L. Howard, Clerk,
U. S. District Court
By Cecil A. Qualls, Deputy

The Pleadings

This class action is a sequel to *Radford* v. *Gary*, 145 F. Supp. 541, in which another named plaintiff assailed the Oklahoma Apportionment Statutes for the election of the members to the Oklahoma Legislature, as a deprivation of the equal protection of the laws, vouchsafed to him by the Fourteenth Amendment to the United States Constitution. Like the named plaintiff in the *Radford* case, the plaintiff here is a citizen and resident of Oklahoma, and a qualified voter of the most populous County in the State. As such representative citizen and voter, he alleges that because of the shifting population of the state of Oklahoma from the rural sections to the cities and urban areas and because of the failure and refusal of the Legislature to reapportion its members as required by Article 5, Section 10 of the Oklahoma Constitution, the legislative department has become so grossly malapportioned that the ballot or vote of the plaintiff and those similarly situated, for the elected members of the Legislature, amounts to less than one-tenth of the suffrage of other citizens residing in the rural or

more sparsely settled communities; that the Legislature has repeatedly refused to reapportion itself in compliance with the constitutional mandate; that Initiative Petitions have failed and the judicial department has confessed its impotence to require compliance, as a consequence of which the plaintiff and his class must suffer the deprivation of due process of law and equal protection of the laws, with reference to taxation and the appropriation of public funds, to the serious impairment of his franchise. The prayer is that this Court recognize and enforce his right to an equal voice in his government, as a civil right within the meaning of the Constitution and laws of the United States; and that the Court declare the legislative department of the State of Oklahoma so malapportioned as to deprive its citizens of a republican form of government, and to deprive the plaintiff, and those similarly situated, the equal protection of the laws; that having so declared, the Court proceed to enjoin the State Auditor, State Treasurer, and Members of the Oklahoma Tax Commission from taking any official actions on appropriations or enactment of those claiming to exercise legislative authority; and, that if the plaintiff be mistaken in the remedy sought, he be then granted such remedy as will relieve and cure the evils from which he continues to suffer.

The plaintiff subsequently moved to make the Members of the State Election Board additional parties defendant, and amend his complaint to reiterate the deprivation of his franchise by the diminution or destruction of his vote, by reason of the refusal of the Legislature to reapportion itself, as commanded by the Constitution. Plaintiff specifically alleged that the Supreme Court of the State of Oklahoma had, on the 13th day of February, 1962, granted a writ of mandamus, directing the Secretary of the State Election Board, or his successor, to receive filings for the office of State Representative pursuant to the existing election laws,

and to comply with any ministerial or other functions required by such laws. (House Bill 1033 of the Twenty-eighth Legislature, 14 O.S.A. §§ 45.1 *et seq.*, 71 *et seq.*, 90-101.)

The plaintiff asserts federal court jurisdiction of the subject matter under 28 U.S.C., Sec. 1343(3); that a justiciable controversy is presented; and, that the plaintiff has standing to maintain the suit. By way of immediate relief, the plaintiff seeks an injunction against the members of the State Election Board, to prevent them from certifying the names of candidates for nomination in the forth-coming May 1, 1962 primary election for the House and Senate from the existing districts, or in the alternative, an order directing the defendant Board Members to certify the said candidates for election by the State at large.

After the case was submitted and set for final disposition on Monday, April 23, 1962, M. A. Price, John M. Rasberry, J. R. Hutchens and Roy Grimes, Directors of Oklahomans For Local Government, an unincorporated association, were permitted to intervene as necessary or proper parties to the suit. In their answer, it was alleged that the State Election Board had performed all ministerial and other functions required by it for the conduct of the forthcoming primary; that all further acts in relation to the pending primary election must be done and performed by the several County Election Boards of the State; and, that such Boards are, therefore, indispensable parties to the relief sought and the suit must, therefore, be dismissed. Further answering, the Intervenors deny the justiciability of the relief sought, as political in nature. They specifically deny that the present apportionment of the Oklahoma Legislature operates to deny the plaintiff and his class the equal protection of the laws, but if so, allege that ample provision is made by the Constitution and laws of the State of Oklahoma for constitutional reapportionment; that within the past two years, the people of the State had, at

freely held elections, expressly rejected suggested revisions of their apportionment laws; and, that at the last session of the Legislature, the House of Representatives, by legislative action, did reapportion itself and that such action was approved by the Governor of the State. It is further alleged that a reapportionment, as provided by the Oklahoma Constitution and effected by virtue of shifting and changing population of the State since the adoption of the Constitution, would result in an invidious discrimination against many citizens of the State, and deprive them of the equal protection of the laws. Finally, it is alleged that reapportionment under the Constitution of Oklahoma is vested exclusively in the Legislature; that the Governor of the State is vested solely with the power of convocation; and, that the Legislature is wholly impotent to reapportion, redistrict or reallocate its representation until January, 1963, unless the Governor is required by this Court to call the Legislature into extraordinary session.

Jurisdiction

Federal Court jurisdiction rests upon claimed redress for the deprivation, under color of State law, of a right or privilege secured by the equal protection clause of the United States Constitution. See 28 U.S.C., Sec. 1343. This Court is constituted and convened under 28 U.S.C., Sec. 2284, pursuant to 28 U.S.C., Sec. 2281, to hear and determine the suit, based upon the allegation of the unconstitutionality of the Oklahoma apportionment statutes and the prayer for interlocutory and permanent injunction, restraining the enforcement or operation of such statutes.

When the matter came on for hearing on the plea for temporary relief, the Election Board appeared in person and by counsel, and joined in the statement by counsel for the plaintiff in support of the allegations in the Petition. The State Treasurer, William A. Burkhart, appeared by

counsel and confessed the material allegations in the Petition. Upon oral motion of the plaintiff in open court, the Governor of the State of Oklahoma, Honorable J. Howard Edmondson, was made a party defendant. He thereupon entered his appearance by his attorney, Norman Reynolds, and consented to be sued as a defendant in this action. The Oklahoma Tax Commission and Andy Anderson, State Auditor, appeared by their counsel, Fred Hanson, Assistant Attorney General.

Statement of the Case

At the bar of the Court, the parties freely conceded, as did the parties in *Radford* v. *Gary, supra,* that the Oklahoma Legislature had, since 1910, failed and refused to reapportion the State in compliance with the mandate of the Oklahoma Constitution. Our attention was called to the Reapportionment Act of 1961 (House Bill 1033) by which the House of Representatives purported to reapportion itself, and that the Oklahoma Supreme Court had adjudged it in non-compliance with the constitutional requirements, on the same grounds for which the prior apportionment acts were held deficient; but, that the Oklahoma Supreme Court had refused to enjoin filings and elections under it on the ground that elections under the pre-existing law would result in far greater inequalities of representation than elections under the 1961 Act. See *Jones* v. *Winters,* 369 P.2d 135 (Dec. 19, 1961). And, had ordered the Secretary of the State Election Board to receive filings for office of State Representative under and pursuant to the 1961 Act. *Brown* v. *State Eelection Board,* 369 P.2d 140 (Feb. 13, 1962). It also appears that in 1961, the Oklahoma State Senate attempted to reapportion the entire State for senatorial purposes, but the Act was declared invalid, and the Oklahoma Supreme Court directed the State Election Board to receive filings for the office of the State Senate, pursuant to

the apportionment laws in existence since 1941. *Reed* v. *State Election Board,* 369 P.2d 156 (Feb. 13, 1962; see also Memorandum Decision in No. 39937, *Ludlow* v. *State Election Board* (Feb. 13, 1962).

Speaking through his attorney of record, the Governor of the State of Oklahoma, represented to the Court that he was elected Governor on a program to reapportion the Legislature; that he had recommended reapportionment in compliance with the constitutional mandate to each legislative session during his administration; that he sponsored an Initiative Petition, aimed at constitutional compliance, on which the requisite signatures were obtained, but which was defeated at the polls on September 20, 1960; that as a defendant in *Ludlow* v. *State Election Board, supra,* and as *amicus curiae* in the other recent actions, *i.e., Jones* v. *Winters, supra, Brown* v. *State Election Board, supra,* and *Reed* v. *State Election Board, supra,* he made suggestions concerning relief, which in his judgment were within the jurisdictional reach of the Oklahoma Supreme Court; that in his pleas to the Supreme Court, he had offered to convoke a special session of the Legislature, if that Court would assume jurisdiction and indicate its disposition to afford relief, in the event the Legislature failed to act.

The Governor also calls our attention to the pendency of another Initiative Petition to amend the Constitution, to transfer the enforcement of the constitutional apportionment formula from the Legislature to a Constitutional Apportionment Commission. We are told that the petition was filed in December 1961, bearing approximately 219,000 signatures; that a protest had been filed and is now pending before a Referee of the State Supreme Court; that in the last sixteen years, no Initiative Petition has received the required vote of the people and that, in any event, the pending petition cannot be voted upon in sufficient time to provide the basis for election of members to the Legislature for the 1963 session.

Based upon this experience, the Governor expressed the view that further attempts at reapportionment by legislative or initiative action would be vain and futile; that if the plaintiff and his class are to be afforded the equal protection of the laws, vouchsafed to them by the Constitution, they must find it here—that this Court is the only effective source of relief. Based upon this conviction, the Governor has willingly entered his appearance as a defendant in this case and now offers to convoke the Legislature in extraordinary session, under Article 6, Section 7 of the Oklahoma Constitution, for the specific purpose of enacting a system of election laws in consonance with constitutional requirements, or call a special election under Article 5, Section 20 of the Oklahoma Constitution and 26 O.S., Section 541, for the purpose of filling any vacancies resulting for failure of the forth-coming primary on May 1, 1962. It is suggested that the cost of any special election may be paid from appropriations from the Governor's contingency fund, and such funds are pledged for that purpose as the occasion arises.

The Election Board, responding through its attorney of record, represents that it is being required under mandamus of the Oklahoma Supreme Court to accept filings and conduct elections for the offices of both branches of the Legislature, in disobedience to the Constitution of the State of Oklahoma, and in violation of the equal protection clause of the Constitution of the United States—all in violation of their respective oaths of office. We are urged by the Election Board to grant the relief sought, as the only available and effective remedy.

The parties agree, as indeed they must, to the population of the State of Oklahoma, as evidence by the 1960 Decennial Census, and to the distribution of the population by Counties, as shown by such census. They also agree to the representation of the Legislature by Counties and Districts,

and while the Intervenors do not seem to deny the allegations of the complaint to the effect that the apportionment of legislative representation to population results in a disparity of voting strength between the populous and sparsely populated voting districts, they specifically deny that such numerical inequality is invidiously discriminatory, and offer to prove that by reason of the peculiar economic and geographic characteristics of the presently constituted voting districts, the voting disparity is constitutionally justified, and rationally affords the citizens of the State of Oklahoma, including the plaintiff and his class, the equal protection of the laws.

Justiciability and Standing to Sue

A majority of the Court in *Radford* v. *Gary, supra,* denied relief in the face of a confessed deprivation of constitutional rights, under color of State law, because of the positive admonition to refuse to exercise our "equity powers in cases posing political issues arising from a state's geographical distribution of electoral strength among its political subdivisions." *South* v. *Peters,* 339 U.S. 276, 277. Our decision was influenced by what seemed to be the prevailing view in *Colegrove* v. *Green,* 328 U.S. 549, and we were affirmed per curiam on authority of that case and *Kid* v. *McCandless,* 352 U.S. 902. Now, however, all such jurisdiction and justiciable doubts have been resolved by *Baker* v. *Carr,* — U.S. —, decided March 26, 1962. Jurisdiction of this Court to entertain the suit and to grant appropriate relief is no longer doubtful. Not only is our jurisdiction clear, but we are, indeed, importuned by all the parties, other than the Intervenors, in this suit to grant the long-sought and often denied relief, by some appropriate remedy.

The plaintiff and his class seek to protect or vindicate an interest of their own—"a plain, direct and adequate interest in maintaining the effectiveness of their vote," not merely a citizen's interest in good government. See *Baker*

v. *Carr*, Slip Op., p. 21. Having jurisdiction of a justiciable controversy, this Court is empowered to secure equitable or other relief for the denial of a constitutionally protected right.

The Case for Temporary Relief

As a prerequisite to any relief, it is, of course, incumbent upon the plaintiff to establish the unconstitutionality of the Oklahoma Apportionment Statutes, and plaintiff cannot sustain that burden by merely showing a disparity in the voting strength of the various electoral districts. Numerical inequality of voting strength does not necessarily prove a case for the deprivation of voting rights. An actionable deprivation results only from an invidious discrimination—a disparity without rationality. *McDougall* v. *Green*, 335 U.S. 281; *McGowan* v. *Maryland*, 366 U.S. 420; *Baker* v. *Carr*, *supra*. It seems fair to say, however, that a disparity of ten to one in the voting strength between electoral districts makes out a *prima facie* case for invidious discrimination, and calls for strict justification.

It must be conceded by all, that the present statutory apportionment does not comply with the Oklahoma Constitution. But, even so, a statutory apportionment which does comply with the State Constitution, does not, *ipso factor*, afford the equal protection of the laws, guaranteed under the Fourteenth Amendment. The test to be applied is found in the federal Constitution and, as we have seen, turns on the rationality of the apportionment.

No one has suggested that the challenged apportionment laws were conceived or enacted with the thought or purpose of affording substantial equality of voting rights, as between electoral districts. Until now, the Oklahoma Legislature has proceeded on the premise that the matter of allocating voting strength was strictly within their discretion, or even caprice. The Intervenors offer to show in retrospect a rational basis for the disparity, and they are,

of course, entitled to their proof and they will be heard. Meanwhile, we can find no rational basis for saying that a vote in one electoral district which is worth ten times the vote in another electoral district for the same legislative body, affords the equal protection of the law to the disfavored voter. On the face of the present record, the apportionment for the State of Oklahoma appears to be closely akin to the "crazy quilt" apportionment in Tennessee.

This brings us to the matter of the appropriate relief to be afforded, pending the final determination of the case on its merits. A majority of the Court has reluctantly declined immediate interlocutory relief in the form of an injunction forbidding the forth-coming May 1, 1962 primary election, or alternatively, ordering the election to be conducted at large. Our reasons may be summarized as follows:

Because of the Intervenors' tendered issue of rationality, the drastic and unprecedented relief sought is deemed inappropriate. The effect of such an injunctive decree would be to disrupt a long established electoral system on unsettled facts.

Moreover, there is some question concerning the effectiveness of an injunctive decree, in view of the fact that candidates for the legislative offices have already been certified to the County Election Boards for the conduct of the election and the canvassing of the votes. Indeed, we are told that some of the candidates for the offices involved are unopposed, either in the forth-coming primary or the general election, and are, therefore, presently entitled to a certificate of election. In order to give uniformity of relief, it would thus be necessary to in some way void these certificates of election, and declare these offices vacant. The result would likely be confusion and chaos, and provocative of interminable litigation.

Additionally, we have no assurance that the present Legislature, even if convened in extraordinary session would enact a constitutionally acceptable system of apportionment and election laws for the nomination and election of its successors, prior to the 1963 session. In which event, under the provisions of the Constitution of the State of Oklahoma, the present members of the Legislature would continue to hold their offices until their successors were elected and qualified—presumably in 1965. See Article 23, Section 10, of the Oklahoma Constitution. It would be an awkward and clumsy thing for this Court to undertake to reapportion and redistrict the Legislature of the State of Oklahoma, in accordance with some judicially devised formula, and even more difficult to attempt to supervise special nominations and elections to the reapportioned Legislature. Certainly, we should undertake this essentially legislative function only as a last resort.

This does not mean, however, that the task is insurmountable or that we will not undertake it, if the circumstances ultimately compel it, nor does the denial of immediate relief herein mean that the present Legislature should not be afforded an opportunity to enact prospective reapportionment laws, in accordance with the supreme law of the land, as announced in *Baker* v. *Carr*, *supra*, and to which we all owe allegiance and are amenable. The Legislatures of other states have taken appropriate action to comply with the constitutional requirements, when faced with the inescapable duty of doing so. See *Asbury Park Press* v. *Woolley*, 161 A.2d 705; *Application of Lamb*, 169 A.2d 822; *McGraw* v. *Donovan*, 159 F. Supp. 901, 163 F. Supp. 184, 177 F. Supp. 803. See also *Sims, et al.* v. *Frink, Secretary of State of Alabama, et al.* (April, 1962) (C.A. 5). Meanwhile, this case will proceed to issue and determination on its merits, with all deliberate speed.

APPENDIX II.

DISSENTING OPINION OF JUDGE ROSS RIZLEY

Endorsed: Filed April 30, 1962
Vera L. Howard, Clerk
U. S. District Court
By Cecil A. Qualls, Deputy

I deeply regret that I am unable to agree with my distinguished colleagues and brethren, who constitute this three-judge court, to the effect that by delaying the relief prayed for by the plaintiff until at least 1965 complies with the intent or the spirit of the law announced in *Baker* v. *Carr*.

Actually this class action now before us for consideration is a sequel to *Radford* v. *Gary*, 145 F. Supp. 541, in which another named plaintiff assailed the Oklahoma Apportionment Statutes for the election of members to the Oklahoma State Legislature, as violative of the Oklahoma Constitution and a deprivation of the equal protection laws, vouchsafed to him by the Fourteenth Amendment to the United States Constitution. Like the named plaintiff in the *Radford* case, the plaintiff here is a citizen and resident of Oklahoma, and a qualified voter of the most populous county in the State. As such representative citizen and voter the plaintiff in the instant case claims that because of the shifting population of the State of Oklahoma from the rural sections to the cities and urban areas, and because of the failure and refusal of the Legislature to reapportion its members as required by Article 5, Section 10 of the Oklahoma Constitution, the legislative department has become so grossly malapportioned that the ballot or vote of the plaintiff and those similarly situated, for those elected members of the Legislature, amounts to less than one-tenth of the suffrage of other citizens residing in the rural or more sparsely settled communities. He says that the Oklahoma

Legislature has repeatedly refused to reapportion itself in compliance with the constitutional mandate, that Initiative Petitions have failed, and that the Judicial Department of Oklahoma has confessed its impotence to require compliance, as a consequence of which the plaintiff and his class must suffer the deprivation of due process of law and equal protection of the laws, with reference to taxation and the appropriation of public funds, to the serious impairment of his franchise; and that unless this Court recognizes and enforces his right to an equal voice in his government, as a civil right within the meaning of the Constitution and the laws of the United States, the Court will be depriving the plaintiff, and those similarly situated, of equal protection of the laws.

Subsequent to the filing of his original complaint, the plaintiff moved to make the Members of the State Election Board additional parties defendant and amended his complaint to reiterate the deprivation of his franchise by the diminution or destruction of his vote by reason of the failure of the Legislature to reapportion itself, as commanded by the Constitution. By way of immediate relief, he sought an injunction against the members of the State Election Board to prevent them from certifying the names of candidates for election to the House and Senate from the now existing districts, or ancillary to such relief, that the Court order said Board Members to certify the said candidates for election by the State at large.

At the trial of this case, upon oral motion of the plaintiff in open court, the Governor of the State of Oklahoma, The Honorable J. Howard Edmondson, was made a party defendant. He thereupon entered his appearance by his attorney, Norman Reynolds, and consented to be sued as a defendant in the action.

Subsequently and after the Court had announced in open court that the case was submitted, the intervenors ap-

peared and asked permission to intervene. They were given permission to intervene with the explicit understanding that they must present themselves within the issues as they had been defined by the Court and only upon that condition.

At the bar of the Court the parties freely conceded, as did the parties in *Radford* v. *Gary*, that the Oklahoma Legislature had, since 1910, failed and refused to reapportion the State in compliance with the mandate of the Oklahoma Constitution. Likewise our attention was called to the Reapportionment Act of 1961 (House Bill 1033) by which the House of Representatives purported to reapportion itself, and that the Oklahoma Supreme Court had adjudged it in non-compliance with the constitutional requirements on the same grounds for which prior apportionment acts were held deficient; but, that the Oklahoma Supreme Court had failed to enjoin filings and elections under it on the grounds that elections under the pre-existing law would result in far gerater inequalities of representation than elections under the 1961 Act. See *Jones* v. *Winters*, 369 P.2d 135. And, had mandamused the Election Board to receive filings for the office of State Representative under and pursuant to the 1961 Act, *Brown* v. *State Election Board*, 369 P.2d 140.

It also appears that in 1961 the Oklahoma State Senate attempted to reapportion the entire State for senatorial purposes, but the Act was declared invalid, and the Oklahoma Supreme Court directed the State Election Board to receive filings for the office of the State Senate, pursuant to the apportionment laws in existence since 1941. *Reed* v. *State Election Board*, 369 P.2d 156 (Feb. 13, 1962); see also Memorandum Decision in No. 39937, *Ludlow* v. *State Election Board* (Feb. 13, 1962).

Speaking through his attorney of record, the Governor of the State of Oklahoma, represented to the Court that he

was elected Governor on a program to reapportion the Legislature; that he had recommended reapportionment, in compliance with the constitutional mandate, to each legislative session during his administration; that he sponsored an Initiative Petition, aimed at constitutional compliance, on which the requisite signatures were obtained, but which was defeated at the polls on September 20, 1960. He further represented that, as defendant in *Ludlow* v. *State Election Board, supra,* and as *amicus curiae* in other recent actions, *Jones* v. *Winters, supra; Brown* v. *State Election Board, supra;* and *Reed* v. *State Election Board, supra,* he made suggestions concerning relief, which in his judgment were within the jurdisdictional reach of the Oklahoma Supreme Court; that in his pleas to the Supreme Court, he had offered to convoke a special session of the Legislature, if the Supreme Court would assume jurisdiction and indicate its disposition to afford relief, in the event the Legislature failed to act.

The Governor also called the Court's attention to the pendency of another Initiative Pentition to amend the Constitution, to transfer the enforcement of the constitutional apportionment formula from the Legislature to a Constitutional Apportionment Commission, and we were told that the petition was filed in December, 1961, bearing approximately 219,000 signatures, and that a protest has been filed and is now pending before a Referee of the State Supreme Court. The Governor's representative also stated that in the last sixteen years no Initiative Petition has received the required vote of the people and that, in any event, the pending petition could not be voted upon in sufficient time to provide the basis for election of members to the Legislature for the 1963 session.

Based upon this experience, the Governor expressed the view that future attempts at reapportionment by legislative or initiative action would be a vain and futile gesture;

and that if the plaintiff and his class are to be afforded the equal protection of the laws, vouchsafed to them by the Constitution, they must find it here—that this Court is the only effective source of relief. Based upon this conviction, the Governor willingly entered his appearance as a defendant in this case and offered to convoke the Legislature in extraordinary session, under Article 6, Section 5 of the Oklahoma Constitution, for the specific purpose of enacting a system of election laws in consonance with constitutional requirements, or call a special election under Article 5, Section 20 of the Oklahoma Constitution and 26 O.S. 61, Section 541, for the purpose of filling any vacancies which might result from failure of the forthcoming primary on May 1, 1962, as provided by present law. Through his spokesman, the Governor suggested that the cost of any special election could be paid for from appropriations from the Governor's contingency fund, and said funds are pledged for that purpose as the occasion arises.

The Election Board, responding through its attorney of record, represented that it is being required under mandamus of the Oklahoma Supreme Court to accept filings and conduct elections for the offices of both branches of the Legislature, in disobedience to the Constitution of the State of Oklahoma and in violation of the equal protection clause of the Constitution of the United States—all in violation of their respective oaths of office.

It seems to me perfectly clear, from all of this, that electoral representation in both branches of the Oklahoma Legislature, under the apportionment statutes now in existence, are invidiously discriminatory and operate to deprive the plaintiff and those of his class of the equal protection of the laws.

A majority of the special three-judge court, as now constituted, denied relief in *Radford* v. *Gary*, *supra*, in the face of a confessed deprivation of constitutional rights,

under color of State law, because of what seemed to us a positive admonition to refuse to exercise our "equity powers in cases posing political issues arising from a state's geographical distribution of electoral strength among its political subdivisions." *South* v. *Peters*, 339 U.S. 276, 277. Our decision was influenced by what seemed to be the prevailing view in *Colegrove* v. *Green*, 328 U.S. 549, and we were affirmed per curiam on authority of that case and *Kid* v. *McCandless*, 352 U.S. 902. Now, however, all such jurisdiction and justiciable doubts have been resolved by *Baker* v. *Carr*, decided March 26, 1962. Jurisdiction of this Court to entertain the suit and to grant appropriate relief is no longer questioned. Not only is our jurisdiction clear, but we are, indeed, importuned by the plaintiff and the defendants to grant the long-sought and often denied relief by some appropriate remedy. Only the intervenors, which assume another name but are in fact members of the Oklahoma Legislature, are objecting.

As previously stated, the State Election Board, having been mandamused to proceed, has in fact gone ahead with election procedures and has accepted filings and certified those filings to the County Election Boards, where they will be placed on the County ballots and distributed to the precincts for the May 1 election. Also, in instances where legislative candidates were unopposed, certificates of nomination have been issued to such unopposed candidates in compliance with 26 O.S.A. 166. Having proceeded thus far under the order of the Supreme Court of Oklahoma, the Board was made a party defendant in this case in the Western District of Oklahoma, wherein the plaintiff has sought to enjoin the May 1 primary because his Federal Constitutional rights would be violated by the malapportionment which would be perpetuated by the primary election under existing apportionment laws.

As we understand the postion of the Eelection Board in this case, although formally an adversary of the plaintiff, the defendant Board is substantially sympathetic with the plaintiff's cause, and while it has not voluntarily urged the Court to restrain it from acting, it has clearly pointed out that for it to act on May 1 would be for it to further violate its oaths to uphold the Constitution of the United States and of the State of Oklahoma, and it believes and urges that existing apportionment laws are in violation of the 14th Amendment to the U. S. Constitution and thus clearly unconstitutional.

The majority says, that even though admittedly the present apportionment does not comply with the Oklahoma Constitution and constitutes invidious discrimination under Oklahoma Law, that we should not grant temporary relief because the plaintiff has not made a *prima facie* case of invidious discrimination so far as the Constitution of the United States is concerned. The issues as defined and confined admit that present apportionment laws show a disparity of ten to one in the voting strength between electoral districts. The Oklahoma Supreme Court has so found and held.

In my opinion it is stretching the point to absurdity for this Court to say that such disparity of voting strength and equality does not within itself make a case of invidious discrimination under the 14th Amendment of the Federal Constitution.

"Ours is a representative form of government. It can remain such in the true sense only if the vote of each citizen has equality with that of his neighbor in the other counties of the State, according to the prescription of the organic law. To the extent that his county is given a lesser number of members in the lower House than are its due, his vote diminishes in value, and thus he does not receive the full measure of protection and representation which are of the

essence of democracy. No man can boast of a higher privilege than the right granted to the citizens of our State and Nation of equal suffrage and thereby to equal representation in the making of the laws of the land. Under our Constitution that right is absolute. It is one of which he cannot be deprived either deliberately or by inaction on the part of a Legislature. Inaction which causes an apportionment act to have unequal and arbitrary effects throughout the State is just as much a denial of equality as if a positive statute had been passed to accomplish the result. In our view, such deprivation not only offends against the State Constitution but may very well deny equal protection of the laws in violation of the Fourteenth Amendment of the United States Constitution." See *Asbury Park Press, Inc.* v. *Wooley,* 161 A.2d 705, pp. 709-710.

Finally, the majority says that to enjoin the May 1 primary would likely cause confusion and chaos and be provocative of indeterminable litigation because, they say, some of the members of the Legislature have already been issued certificates of nomination and many others will be after the May primary. It is hard for me to follow the thinking of my brothers—that by condoning elections in unconstitutional districts, and thus encouraging more certificates of nomination and election, we are thus curtailing chaos and confusion and preventing provocative and indeterminable lawsuits. It could well be argued that under Oklahoma law an election certificate is conclusive. *State ex rel. Love* v. *Smith,* 142 Pac. 408.

Can an Election Be Enjoined?

Intervenors have cited an Oklahoma case (221 Pac. 779) to the effect that an election cannot be enjoined even if it is an illegal election. The Oklahoma Constitution provides in Article 3, Section 7 that no power, civil or military, shall ever interfere to prevent the free exercise of the right of suffrage. However, I believe and so hold that legal

elections under constitutional laws shall not be enjoined but that the constitutional provision just mentioned would not inhibit the exercise of injunctive relief to halt an election under invalid and unconstitutional laws, which laws themselves strike at the very heart of the freedom and equality of suffrage prescribed by Article 3, Section 7 of the Oklahoma Constitution.

If the Election Board were enjoined from proceeding with the May 1 primary, it would be a simple enough matter for it to rescind and cancel the certifications of filings and of nominations heretofore issued. It could do this under its general power to act in the first place with regard to those certifications, and certainly it could do so if the Court, in its interlocutory decree, declared such certifications invalid.

After an Injunction, What?

What could be done if interlocutory relief is granted? I do not believe that the holding of at large elections is a practical interim answer, however, proper apportionment should and could be made and primary elections held in ample time for the general election in November, 1962. Certainly it is worthy of note here that a three-judge court in Alabama, while refusing to give interlocutory relief, had this to say, "The application is continued and re-set for hearing at ten o'clock on Monday, July 16. The hearing cannot be set for a much later date because, if this Court is to act effectively, some action must be taken in ample time before the general election of November, 1962."

I respectfully suggest that the majority in this case offers no relief other than a lecture to the members of the legislative body that they have a duty to act and ought to act, that they ought to do it in a special session, but, if not, in the next regular session to begin in 1963, and that

this Court will merely retain jurisdiction to see what the Legislature does.

Primary elections under existing apportionment laws should be enjoined. This Court should retain jurisdiction of the case and same should be continued to a day certain in mid or late summer. In its interlocutory decree, the Court should find that there has been at least a *prima facie* showing that existing apportionment laws are invalid and unconstitutional by both the State and Federal Constitutional yardsticks. The Court should strongly indicate that legislative reapportionment should be immediately forthcoming. The injunctive decree would serve as a sufficient stimulus for the calling of a special session of the Legislature by the Governor. In this connection, only the Governor can call a special session. The Legislature cannot convene itself. See Article 6, Section 7 of the Constitution of Oklahoma and the cases annotated thereunder.

If the Legislature met under such circumstances, it is highly probable, in view of an interlocutory decree, that the Legislature would reapportion itself and set new primary election dates and filing periods for the holding of valid and constitutional legislative elections in 1962. There is no question as to the Legislature's power to make the apportionment and prescribe the form, time and manner of primary and general elections. See Article 3, Sections 4, 4a, 5 and 6 of the Oklahoma Constitution. Certainly ample time remains for the Legislature to make the apportionment according to law and implement such so we could have primaries and a general election that would be legal as applied to the Legislature.

Should there be no special session, or should the Legislature fail to act, then the Court should proceed to hear the case on its merits. Assuming that the Court found that existing malapportionment violates the Fourteenth Amendment to the United States Constitution, the Court should

make the apportionment itself under its plenary equity powers and in the light of Article 5, Section 10(j) of the Oklahoma Constitution. I believe that the extraordinary powers to review are so broadly stated therein as to include the power to revise; else, the rights of citizens who are wronged would be without redress or remedy, and this section of the Constitution would be empty and vain.

The making of the apportionment by the Court will in no sense constitute an invasion of the province of the Legislature. It will not be judicial legislation. This is so because the apportionment would be made in order to achieve that substantial equality of representation which is spelled out as a formula in the Oklahoma Constitution. The Court would simply apply the formula to the Federal census figures of 1960. That application would be a mere ministerial act to be performed by the Court, or a special master. The Court has the power and could direct the defendant Board in this case to apply the formula and make the necessary districts for the House and Senate.

The sole question at issue is whether or not plaintiff's rights to substantial equality of representation, as expressed in the equal protection clause of the Constitution of the United States, will be violated if an election is held on May 1 under existing apportionment laws. All parties to this action have stipulated as to the essential facts.

Although intervenors proposed to introduce some evidence about the rationality of the existing apportionment, when given the opportunity to do so, they quickly reneged, pleading that they were not ready to introduce evidence, notwithstanding the fact that certain members of the Legislature were then in the courtroom and that intervenors had themselves filed their motion to intervene and proposed answer three days before the hearing.

The intolerable condition of malapportionment has existed for fifty years in Oklahoma. For twenty years the

Supreme Court of this State has said that existing apportionment does not comply with the Constitution and it has expressed hope that succeeding Legislatures would do something about it. Twenty years have passed and nothing has been done. On May 1 the people of Oklahoma will, in the absence of interlocutory relief, again nominate and later elect a Legislature which will be so badly misapportioned that the rights of all of the citizens of Oklahoma to the equal protection of the laws will be denied. That election should be enjoined. The Court now has the power to cure the cancer of malapportionment. To refuse to exercise this power and to hope that sometime in the future some malapportioned Legislature will cure itself of this disease is the same kind of fond hope expressed by the Supreme Court of Oklahoma twenty years ago.

There will be no special session of the Legislature if interlocutory relief is denied. The next regular session of the Legislature will be as malapportioned as its predecessors. That it will act in accordance with constitutional standards is entirely speculative.

Here and now the constitutional rights of citizens are being violated and will again be violated on May 1. This Court's duty is simply to declare that there is at least a grave question as to the constitutionality of existing apportionment under the Federal Constitution and to enjoin the May 1 primary. To temporarily halt an illegal and unconstitutional election is not to deny the rights of suffrage, but is to stimulate the proper constitutional agencies of government to do that which the Constitution declares should be done. If we are to continue to live under a constitutional government, the Constitution must be followed by every citizen and every agency of government. This Court's duty is to measure the actions of citizens and government alike by the Constitution and to enjoin without equivocation any purported action of citizens or govern-

ment which does not measure up to plain constitutional requirements.

The evil pointed up by this case is not new. Our would-be republican form of government has long been stigmatized by this same die-hard political parasite. The refusal of a Legislature, such as the one in view, to voluntarily comply with the clear mandates of the State Constitution, to which such body owes its existence, is inexcusable and demonstrates anarchic contempt for the ideal that this government continue as one of high-principled laws rather than degenerate into one of unprincipled men.

As a member of this court, I refuse to condone a Legislature which exists from districts declared by our own Supreme Court to be unconstitutional. I refuse to put the judicial stamp of approval on holding further unconstitutional elections for the members of the State Legislature.

I most respectfully dissent.

Ross Rizley
Ross Rizley, Judge
United States District Court
For the Western District of Oklahoma

APPENDIX III.

INTERLOCUTORY DECREE

Endorsed: Filed Jun. 19, 1962
Vera L. Howard, Clerk
U. S. District Court
By Cecil A. Qualls, Deputy

Be it remembered, that this class action came on regularly for hearing June 12, 1962, pursuant to notice, on the petition of the Plaintiff and his class to annul the apportionment statutes of the State of Oklahoma, as violative of the equal protection clause of the Constitution of the United States, and a deprivation of his and their civil rights under 28 U.S.C. § 1343. The parties appearing in person, or by counsel, as indicated in the former hearing. The Court having received evidence and having taken judicial notice of pertinent matters, and being fully advised in the premises, doth find and conclude:

1. That this specially constituted three-judge Court has jurisdiction of the subject matter and of the parties, with the power to hear and decide the controversy presented by the pleadings.

2. The Court is of the opinion that the existing statutes of the State of Oklahoma, relating to apportionment for the nomination and election of the members of both houses of the Oklahoma Legislature are invidiously discriminatory against the Plaintiff and his class; hence, null and void.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Title 14, Secs. 9-77, inclusive, 99 and 100 O.S. (1961), and Article 5, Section 11 of the Oklahoma Constitution, where presently operative, be, and they are hereby declared prospectively null and void, and inoperative for all future elections.

IT IS FURTHER ORDERED that this cause be continued until July 31, 1962, for the effectuation of appropriate relief and final judgment.

/s/ Alfred P. Murrah
Circuit Judge

/s/ Ross Rizley
District Judge

/s/ Fred Daugherty
District Judge

APPENDIX IV.

Before MURRAH, Circuit Judge, and RIZLEY and DAUGHERTY, District Judges.

MURRAH, Circuit Judge.

FURTHER STATEMENT OF FACTS AND LAW ON THE MERITS

Endorsed: Filed Jun. 19, 1962.
Vera L. Howard, Clerk
U. S. District Court
By Cecil A. Qualls, Deputy

When this case came on for hearing on motion for temporary relief, we held the complaint sufficient to state a justiciable controversy, cognizable under 28 U.S.C. § 1343, of which this three-judge Court has jurisdiction under 28 U.S.C. § 2284, pursuant to 28 U.S.C. § 2281. We expressed the view that a numerical disparity of as much as ten to one in legislative electoral districts, raised a serious question of malapportionment, which may very well constitute a prima facie case for invidious discrimination.

The Intervenors offered to show in retrospect a rational basis for the disparity, and we denied temporary

injunctive relief and ordered the case to proceed to issue and trial on its merits "with all deliberate speed."

The case now comes on for trial on its merits, the parties appearing in person or by counsel, as in the former proceedings. From the stipulations, evidence, and other facts of judicial notice, we find that there has been only token reapportionment by the State of Oklahoma of its legislative body since 1911. Both branches of the Legislature have consistently disregarded the provisions of the State Constitution, with respect to reapportionment, with no thought of affording the equal protection of the laws. While there have been a number of attempts to reapportion by Initiative Petition and Referendum, all such proposals have been defeated at the polls. There is now pending in the Supreme Court of Oklahoma, a further Initiative Petition, providing for constitutional reapportionment through the medium of a Reapportionment Commission. This petition has been vigorously opposed by the Intervenors in this case, and has been pending in the courts for more than five months.

The application of the 1960 Federal Census in Oklahoma to existing legislative apportionment, graphically demonstrates the present numerical disparity in the relative weight of the votes cast for respective members of the Legislature. By reference to this census, as applied to the present legislative apportionment, one vote for legislative Representative in Cimarron County is equal to fourteen votes for the same office in Oklahoma County, and eleven votes in Tulsa County. The numerical disparity existing in the Senatorial Districts is even greater. For instance, one vote in Senatorial District No. 26, comprising Love and Marshall Counties, equals 26.4 votes in District No. 31, comprising Tulsa County. The facts reveal that 61 members of the House of Representatives, constituting a majority, represent 26% of the total population of the

State. The other 60 members of that House represent 74% of the population, or an average of 28,642 persons per Representative. Reduced to its simplest terms, this means that a majority of the Legislature is responsible to only 26% of the population and that the remaining Representatives represent 74% of the people.

Applying this analysis to the State Senate, it will be seen that nine Senators represent 52% of the people, or an average of 128,642 persons per Senator; the other 35 Senators represent about 48% of the population. In terms of voting strength, this means that a great majority of the Senators are answerable to slightly less than one-half the people, and that nine of the 44 Senators represent 52% of the population.

Approaching these statistics from another point of view, all but 15 of the 77 districts are over-represented, when their actual population is compared to that which would be required to make up the State constitutional ratio, under the present census. Summarizing further, the facts reveal that there are discrepancies under present apportionment of as much as twenty-six to one, in the weight of an individual vote.

While mere numerical disparity in voting strength is not, per se, invidiously discriminatory, it is, to be sure, cogent evidence of it and, as we have seen, may be sufficiently disproportionate to constitute a prima facie showing. This is so, we think, because under our democratic institutions and republican form of government, the suffrage right of the individual is, and must be, the keystone—the common denominator, of self-government. Indeed, the framers of the Oklahoma Constitution recognized this inalienable principle by providing that population should be the primary basis for electoral diffusion. See: Article 5, Section 9 and 10, of the Constitution of the State of Oklahoma. Under the Oklahoma Constitution, the principle of

numerical equality is the rule, and any deviation is the exception. *Jones* v. *Freeman*, 146 P.2d 564. We think this principle should also be our guideline in determining whether the equal protection of the laws has been honored in the State electoral processes. There may be relevant counter-vailing factors, such as geography, economics, mass media and functional or group voting strength. But none of these factors, whether considered separately or collectively, can overcome the basic principle underlying the right of an individual to cast an effective vote. See: Excerpts from testimony of Dr. Joseph Pray, attached hereto as Appendix.

Intervenors have specifically denied the irrationality of the existing numerical disparity and contend that apportionment in accordance with the mandate of the Oklahoma Constitution would operate to deprive them of the equal protection of the laws. They seem to say that any deviation from the present apportionment would be a deprivation of their rights. In sum, they claim a Federal constitutional right in the present apportionment.

Before this case came on for hearing, Intervenors moved for a continuance, and renewed the motion on the hearing date, in order to obtain sufficient time to correllate and evaluate what they considered competent data, justifying the existing apportionment. Particularly, they set forth eight (8) separately numbered categories of statistical data and information, allegedly requiring additional time for compilation. An examination of each of these categories reveals that all of the suggested data or information is, and has been, at all times readily available in the form of public records to the Intervenors or, for that matter, to any interested person. Moreover, it may be that the suggested factors are a product of, rather than a rational basis for, the existing discrimination. Surely, one may not acquire a constitutional right to a status, which is created by the

persistent disregard of constitutional precepts. In short, the Intervenors may not pull themselves up by their own constitutional bootstraps. Additionally, it should be noted that more than fifty days have elapsed since the denial of temporary relief and the case was ordered to trial on its merits. Even so, we cannot believe that Intervenors have been prejudiced in any manner by the unavailability of any information which they say is pertinent. We are thus brought to the conclusion that if the Intervenors have a defense, based upon the rationality of the present apportionment, they have not diligently pursued it. The continuance was consequently denied.

On this record, the Court concludes that the existing apportionment of the offices of both houses of the Oklahoma Legislature is grossly and egregiously disproportionate, and without rational basis or justification in law or fact. We conclude that the apportionment of the Legislature of Oklahoma, under and by virtue of its apportionment statutes is invidiously discriminatory against this Plaintiff and his class of voters, and all such statutes are, therefore, unconstitutional and void.

The Plaintiff and his class are entitled to appropriate equitable relief, which will substantially insure the numerical reapportionment of the Oklahoma Legislature, in a manner to accord the Plaintiff and his class the equal protection of the laws, guaranteed by the Fourteenth Amendment. The Court has not heard evidence on the appropriateness of the relief, and the matter is set for further hearing on the 31st day of July, 1962, for the purpose of determining the form of relief to be granted. Meanwhile, it seems desirable to note some of the suggested remedies, to which the Plaintiff may be entitled:

1. Reapportionment by the Legislature itself. This, of course, is the most desirable and the most efficacious, for, as we have said, the constitutional duty rests first and

foremost upon the legislative body, whose duty it is to observe and comply with the supreme law of the land, as it is judicially construed and applied.

2. Initiative and Referendum. We, of course, have in mind the pending Initiative Petition as a possible available remedy, but the right asserted here cannot be made to depend upon the will of the majority. It is founded in the Federal Statute, which gives redress for the deprivation of civil rights, including the integrity of the ballot.

3. Reapportionment by Judicial intervention, either by some judicially devised formula or election at large until constitutional apportionment is achieved by legislative action. Neither of these alternatives are desirable, and will be resorted to only if the Legislature fails to constitutionally reapportion itself, so as to afford equal protection of the laws. In that connection, it should be noted that there is ample time for the Governor of this State to call the present Legislature into extraordinary session for the specific purpose of enacting a system of reapportionment laws, which will comply with the requirements of the equal protection of the laws. In this manner, the Legislators will be free to act, unencumbered and unentangled with the legislative problems which will confront the general session, convening early in 1963. If, therefore, the Legislature is in special session, or has been called before the date fixed herein for final judgment, the case will be continued until September 10, 1962, to await legislative action.

If and when, in the course of this litigation, it becomes necessary to bring about constitutional reapportionment by direct judicial action, it will be time enough to hear and consider any counter-vailing factors, which may enter into the equation of reapportionment, based essentially upon population. Until that day, the judicial hand is stayed.

[APPENDIX]

[*Appendix to further Statement of Facts and Law on the Merits*]

Excerpts from the Testimony of Dr. Joseph Pray, at the Hearing held June 12, 1962

Q. (By MURRAH, C.J.) Doctor, may I ask you a question which, in my judgment, goes to the heart of this lawsuit. You understand that the plaintiffs in this case, who are qualified electors in a populous County in the State, are here complaining that the present apportionment laws of the State of Oklahoma operate to invidiously discriminate against them in the exercise of their voting rights. You also understand this Court is empowered to hear and determine that complaint, and what we are now seeking to determine is whether or not the present apportionment laws of this State infringe the equal protection clause of the Fourteenth Amendment, in that it invidiously discriminates against these plaintiffs. You understand that?

A. (By Dr. Joseph Pray) I do, yes sir.

Q. The Supreme Court of the United States has said that the equal protection of the laws, guaranteed by the Fourteenth Amendment, does not assure a proper diffusion of political initiative as between its thinly populated Counties and those having concentrated populations. You understand that?

A. Yes sir, I understand diffusion.

Q. * * * (T)he Courts have said that the equal protection of the laws does not require a State to achieve numerical equality with exactitude. That is to say, there may be some disparity between one County and another, so long as it doesn't amount to invidious discrimination.

A. Yes sir.

Q. That is the key word, and if we analyze what invidious discrimination means, then we quite understand what the Courts are talking about. Now then, we have the proof here, and it stands undisputed, that there has been no reapportionment since statehood. Meanwhile, as you know, we have had a rather radical shift in population into the metropolitan centers of the State, and so we stand here on the facts, with a wide disparity of representation on a ratio which is shown here as much as one to 26. You understand that fact?

A. Yes, sir.

Q. Now then, on a population basis, and the facts before this Court demonstrate beyond any doubt, that there is a wide disparity in population with respect to representation, in ratio, to representation in the legislative body. My question is, what other factors should the science of government take into consideration, and therefore, what other factors should this Court take into consideration in terms of equal protection of the laws, to assure a proper diffusion of political initiative? What factors, other than numerical representation, should we take into consideration? You could help this Court immeasurably, if you would enlighten us on that.

* * * * * *

A. This is a fundamental question. * * * It goes very much to the heart of the whole issue, and I am thinking of Baker versus Carr and the majority and minority opinions, and the various views expressed there. * * * We are going to come back to this problem many, many times in the next five years, but I did refer to this, it seems to me, possibly anticipating this question, when I talked about the necessity to start

at some place when it comes to the diffusion of political power. This is the key to politics. * * * To start at some place where the common denominator is the individual. We are talking about human society. The study of politics, particularly in recent years, has been very much interested in not who has suffrage, but who is influential in the legislative arena, the subject of pressure groups for instance, how influential they are, and how does a person go about getting enough campaign funds or how to run an effective campaign, it goes into the question of mass communication. It refers to whether the plaintiffs, being in an urban area, don't have counter-vailing facilities at their disposal. The metropolitan press has been a matter of great contention in a State like ours. It is hard to tell whether it helps you or hurts you. It has been a question of whether this large group was more significant than this little person, who may or may not be their representative. Take the majority position in Baker versus Carr, in terms of when you should presumably strike down an apportionment scheme, if there is no rational basis.

Q. We are asked to strike down the present statutory apportionment on the ground it operates invidiously to discriminate against this particular plaintiff and those like him.

A. The operation of the scheme?

Q. Yes, the operation.

* * * * * *

A. * * * The majority view stresses the suffrage phase of this question. This is a very important point to me, to the extent of what you had in Tennessee, and which is not different much from our situation, it seems to me.

A. * * * And to the extent you have one to 26, you have a diffusion of suffrage power which is as bad as if the vote was not counted because of fraud or some other reason it would also violate it, or if the discrimination on suffrage grounds was based on race, let us say, the white primary cases are especially, as long as you look at it in terms of whether or not this vote is being made effective, and you appreciate that our National constitution, for various reasons, calls for our votes being made effective. This sort of thing, and this sort of analogy, which, I think, is a very good analogy, whe nit takes into consideration there are people being affected because their votes—this sort of thing wouldn't condone much interference with the basis of numbers.

Q. Nor any room for tolerance?

A. Not any room for tolerance. * * * There is a rough and ready relationship here which somehow is a necessity, if you think a person's vote should be counted. Now about these counter-vailing factors which come regularly. I think society will have to take care of those other ways but again when we divide the access to power by giving people the right to vote, the privilege of voting although some authority disregard it, you can bring these counter-vailing factors in. Some place you have to start in a Democracy with the general principle of numerical equality.

* * * * * *

Q. * * * assuming one County traditionally casts * * * a much higher percentage of its qualified electors, and the populous County doesn't. Can we take that into consideration?

A. One doesn't exercise its right—

Q. Declining the constitutional right to do so if he chooses. Is that what you are talking about?

A. I will say you cannot take that into consideration * * *.

* * * * * *

Q. May I ask you this question: As I understand the testimony today, as stated a moment ago, we have a wide disparity in America. That stands, either admitted or not. Do you think of any other factors by which this Court could justify it in terms of equal protection of the laws?

A. In other factors but numbers?

Q. Yes, Any other factors that would justify or by which this Court could say in the face of this * * * obvious disparity, that it may be justified as affording the equal protection of the law?

A. I don't think so. I will make one little modification in a minute but the experience with functional representation where it has been tried in Europe as part of their legislative process. * * * This is a thing Germany tried for years * * * on the assumption (of) * * * working out a system of representation which is mostly more vital because some of the dynamic aspects of political decisions go off on organized efforts rather than the efforts of individuals; when you try functional representation. * * *

Q. Will you explain what you mean by functional?

A. The use of an economic council which would set up an individual body instead of individuals and based on the representation of the dynamic economical groups in the state and one of the legs this thing falls back on; to keep that representation, three per cent or whatever it is. Would it be three per cent ten years from now and so on? The political groupings of dynamic

interest groups in our political life is a rapidly changing arrangement. They have come to the fore very significantly today and not so much tomorrow. * * * This is a prime example of using other groups rather than the individual, economic representation. It has bogged down because political decision has to be made somewhere. * * * You start with the individual and you try to adhere to him, as a basis rather than use a functional group. If you built in a favorable position for a favorable minority group, how would you get rid of it? How would the dynamics be developed if you would regroup it?

Q. Under our system of government the dignity of the individual is recognized and the individuals are here * * * asserting a personal right in that connection, and, of course, we are concerned not with classes so much as we are the dignity of the individual and his personal right to vote and have his voted counted. That is our inquiry and that is our concern. Then as I understand your testimony, and I certainly don't wish to put any words in your mouth, as I understand your testimony, you say as a student of the science of government and as a student of our particular problem here, do you not think that economic or political factors that enter into the equation are such as would justify the numerical disparity?

A. Justify going against the numerical arrangement?

Q. Yes.

A. I don't. I do not think there should be any group.

Q. Do you know of any factors?

A. There is no question but what minority groups, and it might be an urban minority or a rural minority, the minority groups will struggle like everything to get more power, decision making or whatever their mem-

bers call it. So there will always be this striving, that is assured, but this should not be the starting point. You should start with the individual and dignity of the individual and all of that.

Q. Something that approximates numerical equality.

A. Yes.

Q. Is that your starting point?

A. The starting point is there.

APPENDIX V.

DECREE

Endorsed: Filed Aug. 3, 1962.
Vera L. Howard, Clerk,
U. S. District Court
By Cecil A. Qualls, Deputy

The above matter came on for hearing pursuant to assignment on the 31st day of July, 1962, on the Motion to Alter or Amend Decree, filed by the Intervenors M. A. Price, et al., Directors of Oklahomans For Local Government, an unincorporated association, and for a consideration of the various remedies for reapportionment suitable for implementation in view of the previous Interlocutory Decree entered by this Court on June 19, 1962.

The said Motion to Alter or Amend Decree is overruled, except by way of clarification it is the order of the Court that the scheduled general election, to be held on November 6, 1962, is not affected by the order of this Court entered on June 19, 1962 to the effect that the laws under which the present legislature of Oklahoma is apportioned are "prospectively null and void and inoperative for all future elections." The forthcoming November 6,

1962 election is not a "future election" within the meaning of said Interlocutory Decree, but is an election under way and in being at the time said order was entered, the same having started with the filing period in February, 1962, and having continued through primary and runoff elections with the said general election remaining to be held to complete the election process. See: *Gragg* v. *Dudley*, 289 P. 254. Moreover, by reapportionment being necessarily prospective in nature and being accomplished for future effect, said interlocutory decree applies to the elections of 1964 and future elections, including any election that may follow the 1962 election which is now in progress and has been since February, 1962.

With reference to a consideration of the remedies available to effect future reapportionment and the selection of a constitutionally acceptable remedy, the Court is of the opinion and decides that it defer action to the general session of the Oklahoma Legislature to be held in 1963, with a date to be fixed for final action in the matter by such Legislature and with positive guidelines or standards now being furnished said Legislature in the matter of discharging its responsibility to reapportion both houses of said Legislature for the 1964 and ensuing elections.

The following guidelines or standards are established:

1.

The Oklahoma Legislature will be reapportioned on the general principle of substantial numerical equality, to the end that each voter shall have approximately the same power and influence in the election of members of the two houses, which is in consonance with the intent and spirit of the Oklahoma Constitution and the equal protection clause of the Fourteenth Amendment of the United States Constitution.

2.

The House of Representatives of the Oklahoma Legislature will be reapportioned in accordance with the provisions of the Oklahoma Constitution relating to such House, except the Court finds and declares that the seven member ceiling established in Section 10(d), Article 5, Oklahoma Constitution for populous Counties results in invidious discrimination against the Plaintiff and his class, therefore violates the Fourteenth Amendment of the United States Constitution, and must be disregarded.

3.

The said seven member ceiling being eliminated, Oklahoma and Tulsa Counties are entitled to 19 and 15 legislative seats, respectively, under proper reapportionment, under the 1960 Federal Census.

4.

The Senate of the Oklahoma Legislature will be reapportioned in accordance with the provisions of the Oklahoma Constitution relating thereto. In this connection, however, the Court is brought face to face with an irreconcilable incongruity in Section 9(a) of Article 5, of the Oklahoma Constitution, with respect to the formula for apportioning the Senate. This incongruity is caused by the "except" clause in Section 9(a), which creates a discrepancy between the total number of Districts and the total number of Senators. We resolve this incongruity in favor of equality of representation, which is mentioned three times in Sections 9(a) and 9(b), believing as we do that it is in consonance with the general principle of the Oklahoma Constitution, as construed by the Oklahoma Supreme Court in *Jones* v. *Freeman*, 146 P.8d 564, and more nearly conforms to the equal protection clause of the Fourteenth Amendment to the United States Constitution. Applying this general principle of equality, the Oklahoma Senate

will thus consist of 44 Districts and 44 Senators. Under the 1960 Federal Census, Oklahoma County is entitled to eight Senatorial Districts and Senators; Tulsa County, seven Senatorial Districts and Senators; and, Comanche County, two Senatorial Districts and Senators. Those Counties having multiple Senatorial Districts will be districted within themselves into the requisite number of Districts by legislative act, provided each such District shall contain as near as may be an equal number of inhabitants; shall be contiguous and compact as practicable.

5.

The matter of forming legislative Districts, either House or Senate, among Counties is left to the discretion of the Legislature, under the pertinent provisions of the Constitution with respect to substantial numerical equality, compactness and contiguity. In this connection, the Memorandum and Suggested Order and Decree, filed in this Court on July 30, 1962, by the Honorable Fred Hansen, First Assistant and Acting Attorney General, is recommended as a most helpful treatise, and contains a Suggested Order And Decree which indicates a legislative apportionment for both houses, which has been studied by the Court, and which is believed to meet the desired standards.

Five months hence, when the Legislature convenes, it must reapportion itself in accordance with the constitutional mandate, or be judicially reapportioned. We have withheld judicial reapportionment on the solemn word of the intervening legislators that once their constitutional duty is unequivocally and unescapably clear, they will discharge it with befitting honor and fidelity.

Jurisdiction is retained in this case and the same is continued until the 8th day of March, 1963, at which time the case will be called, and if proper action has been taken by the Oklahoma State Legislature under the guidance

afforded herein, the same will be affirmed and approved and this case dismissed. Failing this accomplishment, this Court will then order and decree reapportionment by judicial order, in conformity with the guidance herein furnished.

Dated this 3rd day of August, 1962.

/s/ Alfred P. Murrah
Alfred P. Murrah, Chief Judge
United States Court of Appeals
Tenth Circuit

/s/ Fred Daugherty
Fred Daugherty
United States District Judge

APPENDIX VI.

DISSENTING OPINION OF JUDGE RIZLEY

Endorsed: Filed Aug. 8, 1962
Vera L. Howard, Clerk,
U. S. District Court
By Cecil A. Qualls, Deputy

On June 19, 1962 this Court filed a unanimous opinion in the above styled cause in which it said and I quote:

"The case now comes on for trial on its merits, the parties appearing in person or by counsel. From the stipulations, evidence and other facts of judicial notice, we find there has been only token reapportionment by the State of Oklahoma of its legislative body since 1911. Both branches of the legislature have consistently disregarded the provisions of the State Constitution with respect to reapportionment, with no thought of affording the equal protection of the laws."

We then reviewed all the attempts that had been made to obtain reapportionment in Oklahoma for the past fifty years including the attempt by initiative petition and then said: "On this record, the Court concludes that the existing apportionment of the offices of both houses of the Oklahoma Legislature is *grossly and egregiously* disproportionate, and without rational basis or justification in law or fact. We conclude that the apportionment of the Legislature of Oklahoma, under and by virtue of its apportionment statutes is *invidiously discriminatory* against this Plaintiff and his class of voters, and all such statutes are, therefore, *unconstitutional and void.*" (Italics ours).

We further said in our June opinion: "The Plaintiff and his class are entitled to appropriate equitable relief, which will substantially insure the numerical apportionment of the Oklahoma Legislature, in a manner to accord the Plaintiff and his class the equal protection of the laws, guaranteed by the Fourteenth Amendment."

It should be noted that the Court, after reviewing the history of the Oklahoma Legislature for half a century, was not content with simply using the word "disproportionate," but emphasized that term by using the words "grossly and egregiously disproportionate." Webster's Dictionary defines the word "egregiously" as something that is prominent, eminent, conspicuous for bad quality, flagrant; and the word "invidious" as "tending to excite odium, ill will, or envy; likely to give offense; and unjustly discriminating." Mr. Webster says it is synonymous with "repugnant" and then he defines "repugnant" as "opposed or reciprocally opposed, contradictory, irreconcilable, as a principle repugnant to constitutional law; that offers resistance, hostile, refractory, distasteful, repellent." "Repugnant implies a nature alien to one's ideas, principles, or tastes, and a stirring up of resistance or loathing; repellant, a forbidding or unlovely quality that causes one

to back away, abhorrent, a repugnance that stimulates antagonism."

In keeping with our June opinion, we filed with it a decree in which we said and I quote: "The Court is of the opinion that the existing statutes of the State of Oklahoma, relating to apportionment for the nomination and election of the members of both houses of the Oklahoma Legislature are invidiously discriminatory against the Plaintiff and his class; hence, null and void.

"IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Title 14, Secs. 9-77, inclusive, 99 and 100 O.S. (1961), and Article 5, Section 11 of the Oklahoma Constitution, where presently operative, be, and they are hereby declared prospectively null and void, and inoperative for all future elections."

The majority seem to take comfort in the words "prospectively inoperative" and construe future elections not to mean the November election in 1962. They say further that by us refusing in our first opinion to enjoin the primary election, that we condoned the illegal and unconstitutional statutes, and they say that because the primary and general election is in fact all the same election, that we are obliged to recognize it as a legal election, notwithstanding that we have said the statutes under which it is being held are null and void.

In my search of judicial decisions since the beginning, I am unable to find any decision of any court which says that by condoning a void and illegal statute or by condoning a wrong, you breathe legality into the statute and give a right to those who operate under it, even though it is wrong.

In an endeavor to overturn the earlier opinion of this Court, entered herein on June 19th, the majority gives two legal reasons unsupported by authority. They say: (1) that

the general election to be held in November, 1962 is not a future election; (2) that when we said in June that the statutes under which the legislature is apportioned are unconstitutional and void, they were just void in June and not in August and that we could control the operation of the Constitution.

The only authority cited by the majority in its decree in support of their findings that the general election in November, 1962 is not a future election is *Gragg* v. *Dudley*, 289 Pac. 254. This case itself is not in point since the interpretation therein that the election process includes registration, primary elections, the general election and the announcement of the election returns is pure dicta insofar as it related to the primaries. There a State Senator sought to run for the office of Lt. Governor. The question was raised that this violated Article 5, Section 23 of the Oklahoma Constitution. All that was necessary to that decision was the ruling that the November election was not complete until the votes were counted and the result made known.

Article 3, Section 1 of the Oklahoma Constitution provides:

> "Qualified electors of this State shall be citizens * * * who have resided * * * in the election precinct thirty days next preceding the election to which such elector offers to vote."

Under Oklahoma law, a registration period is provided before the primary election, the run-off election, and still another before the general election. If the theory adopted by the majority is correct, the last two named registrations would violate this constitutional provision.

As a practical matter the Oklahoma Supreme Court in the case of *Stafford* v. *State Election Board*, 218 Pac. (2d)

617, did distinguish the cited case and said at page 620 the following:

> "We agree with the contention of petitioner that the provision of the Constitution that members of the House of Representatives must be at least 21 years of age at the time of their election means at the date of the general election and not the primary election.
>
> "The Constitution does not prescribe the qualifications of a candidate in a primary election."

In *State* v. *Carter*, 59 Pac. (2d) 948, at 949, the Oklahoma Supreme Court said:

> "At the time of the adoption of the Constitution great consideration was given to the question of popular election of public officials. The Constitution required the Legislature to pass a mandatory primary law. Section 5, Article 3, Const. However, it has been well recognized not only in this State, but by the highest courts of other states, that there is a wide distinction between 'election' and a primary election; the latter being statutory methods provided for the selection of representatives of the various political parties in the 'elections' provided by the Constitution for the selection of the various state, county and other public officers."

We submit that it is perfectly obvious that what the majority meant in June and what they now mean are entirely two different things.

The majority in its haste to recede from our June 19th opinion has glossed over a very important question of law. That is to say, where a court, as we did in the June opinion, declares a statute creating public offices null and void, the statute is null and void ab initio. This principle of law is set out at length in the landmark case of *Norton* v. *Shelby County*, 118 U.S. 425. The Supreme Court of Tennessee had earlier declared a statute allowing a board

of commissioners to subscribe to railroad stock unconstitutional. The case was appealed to the United States Supreme Court. One of the parties argued that if there was not a de jure officer, that the officers were de facto. The other party argued that if the statute was unconstitutional, there was no office existing and there could not be a de facto officer. Mr. Justice Field, in answering the question posed, said:

> "But it is contended that if the act creating the board was void, and the commissioners were not officers de jure, they were nevertheless officers de facto, and that the acts of the board as a de facto court are binding upon the county."

Said Mr. Field:

> "This contention is met by the fact that there can be no officer, either de jure or de facto, if there is no office to fill. As the act attempting to create the office of commissioner never became a law, the office never came into existence. * * * Their position is, that a legislative act, though unconstitutional, may in terms create an office, and nothing further than its apparent existence is necessary to give validity to the acts of its assumed incumbent. That position, although not stated in this broad form, amounts to nothing else. It is difficult to meet by any argument beyond this statement. An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed."

Our own Oklahoma Supreme Court followed the United States Supreme Court in the case of *State* v. *The Board of County Commissioners of Creek County*, 188 Okla. 184, 107 P.2d 542, which says and I quote:

"The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void, and in legal contemplation is as inoperative as if it had never been passed. It imposes no duties, confers no rights, bestows no power or authority on any one, affords no protection and justifies no acts performed under it."

As I have heretofore suggested, the majority of the Court seems to take comfort in the words "prospectively null and void for all future elections," but the Oklahoma case above cited knocks this argument into a cocked hat by saying courts do not have the power to make a statute inoperative from the point of adjudication forward. Quoting from an earlier Florida case, our Court said, at page 574:

"Validity or invalidity relates to the enactment of a statute under existing organic law and not to a subsequent date. The courts have no power to make a statute inoperative only from the date of an adjudicated invalidity, because the courts merely adjudge that a statute conflicts with organic law, and the Constitution then operates to make the statute void from its enactment, the courts having no power to control the operation of the Constitution."

We are bound to give weight and validity to the Oklahoma authorities, and when the Oklahoma Court has said that courts have no power to say when a statute is or is not inoperative, after once declaring the statute void as being unconstitutional, it would certainly be presumptious on our part to attempt to control the operation of the Constitution. Far be it from me to say that in a proper case that there is no question but what there is a place for the de facto doctrine, but ours is not such. This doctrine is founded upon consideration of policy and necessity for the protection of the public and individuals whose in-

terests may be affected thereby. Offices are created for the benefit of the public, and private parties are not permitted to inquire into the title of persons clothed with authority. For the good order and peace of society, their authority is to be respected until some mode is prescribed by law to determine their rights to serve. Such is not the case here. The offices of the legislature were determined null and void. They no longer exist, and the decree of June 19th contemplated a sure and orderly correction of the situation. The majority has backed away from the strength of the earlier decree and is now taking a position where they sanction that which they condemned. It is an untenable position, and in my opinion it is the unqualified duty of the Court to apportion.

There is positively no evidence in the record to sustain any finding that there is not ample time to have a primary, a run-off, and a general election to elect a constitutional legislature. In fact all of the evidence is to the contrary.

There is also evidence in the records that funds can be made available to hold the elections. This would be legal, right and not postpone the relief to which we say the plaintiff and all of his class are entitled. "Justice delayed is justice denied."

Finally the majority, in order to extricate themselves from the June opinion, state they have withheld judicial reapportionment on the solemn word of the intervening legislators that once their constitutional duty is unequivocally and unescapably clear, they will discharge it with befitting honor and fidelity. I have searched the record and do not find such a promise on the part of any individual legislator. To the contrary, nowhere does the record disclose that any single legislator, much less a majority of both Houses, have represented that the legislature intends to act in keeping with either the State Constitution or this Court's decree. The majority of the State Senate

who intervened at the hearing on the remedy, state in their pleadings that they desire a legislative session "in order that they may *institute constitutional processes to correct the presently existing discriminatory constitutional provisions*"; further, that "any relief, which the Court might decree, based on census population as aforesaid, would be invidiously arbitrary and discriminatory"; and finally, these intervening defendants contend and attempt to show that the provisions of the Constitution of Oklahoma, in respect to legislative representation in this State, have become invidiously discriminatory since the adoption of said provisions; "and that said provisions cannot be met or enforced by any legislation conforming thereto without contravention of Amendment XIV to the Constitution of the United States."

These intervenors even question the power of the judiciary to enforce the Fourteenth Amendment and state that any decree herein would be an unlawful derogation of their powers. This was their pleading.

At the hearing they substantiated their intent by introducing a plethora of unexplained and useless figures and charts which they orally stated substantiated their contention that we should ignore the census and that they can ignore substantial equality in apportioning or in submitting constitutional revisions pertaining to apportionment.

Intervenors produced only two witnesses. The Speaker of the House of Representatives, who expressed a hope that the House could reapportion but refused to hazard an opinion as to the ability of the Senate to pass apportionment provisions, and I might say parenthetically, it is obvious that if there is only hope that the House might be able to pass such provisions, there can be no hope that the Senate can do so since it is far more malapportioned than the House. The other witness was a State Senator of

many years' service, who would make no stronger statement than he was ready to assume his responsibilities to the people of the State. On cross-examination he admitted that he had always been ready to assume such responsibility, although he further admitted that he had voted against apportionment in accordance with the State Constitution during the previous session. He had served in each of the nine sessions since the State Supreme Court in *Jones* v. *Freeman* stated that the question of apportionment went to the "very vitals of democracy," and the Court in the *Jones* case had further solemnly placed its faith in the State Legislature to uphold its constitutional oaths. This witness stated he would not comply with the order of this Court but only act after the law is clearly outlined by the United States Supreme Court in subsequent opinions, which may take the Lord only knows how long to convince this Senator and others like him.

It is, therefore, respectfully submitted that my brothers' statement is wholly without basis in the record, and the facts of history for almost half a century disclose that it is wholly without justification and can only lead to a hopelessly chaotic legislative session that can produce nothing more than the submission of a constitutional amendment which, if adopted, would violate the Fourteenth Amendment. Even the Supreme Court of the State of Oklahoma in its most recent opinion, *Brown* v. *State Election Board, et al.*, stated:

> "An individual legislator may be willing to vote himself out of an office, but it would be difficult to find one who is willing to vote his constituents out of a legislator contrary to their wishes."

It is respectfully submitted that we should have deferred to the interpretation of the abilities of the legislators to reapportion themselves as expressed by the State Supreme Court and the Chief Executive of the State, who are

in a far better position to judge the situation than are we. It is significant that the legislators solemn word is the only reason given by the majority for staying the judicial hand, and this reason is patently unsound.

We have found a legal wrong to exist. The majority would refer this wronged plaintiff and those of his class to a political remedy. In fact, the political remedy suggested is the very one which has caused the wrong. Therefore, I see no justification for delying the judicial hand and to the contrary I foresee only chaos as a result of this delay and further complications as a result thereof. This Court has been fortunate in having a Chief Executive, a State Treasurer, an acting Attorney General and a State Election Board that have offered full cooperation. Who can dare say that their successors, who will be in office on March 8, 1963, will be as cooperative, much less cooperative at all?

While I might bleed with the majority for the downtrodden intervenors, who pleaded with the Court for a chance to do it themselves, I can only interpret what they may have in their minds by their past acts in challenging not only the Supreme Court of Oklahoma, but also more than 200,000 residents of Oklahoma who signed an Initiative Petition, the State Election Board, and everyone else who has attempted to get them to discharge their constitutional duty with honor and fidelity.

I respectfully dissent.

/s/ Ross Rizley
Ross Rizley, Judge
United States District Court
For the Western District of
Oklahoma.

APPENDIX VII

MEMORANDUM OF DECISION AND FINAL JUDGMENT

This matter came on for further hearing on March 8, 1963, pursuant to Order of August 3, 1962. The plaintiff, Moss, appeared by his attorney, Mr. Sid White. Mr. Norman Reynolds, who represented the Governor when these proceedings were commenced, appeared pro se and with Mr. G. T. Spradling, attorney for the Council of Democratic Neighborhood Clubs. Mr. Delmer Stagner, who represented Mr. William Burkhart, State Treasurer, when these proceedings were commenced, appeared for Mr. Burkhart, individually, as an intervening plaintiff. Mr. Charles Nesbitt, Attorney General, who has succeeded to office since the August hearing, and his First Assistant Mr. W. J. Monroe, appeared representing the present State Treasurer, Cowboy "Pink" Williams, substitute defendant for Mr. Burkhart; Mr. S. F. Shaw, State Auditor, substitute defendant for Mr. Andy Anderson; the members of the Oklahoma Tax Commission, who were original defendants and now compose the Commission; and, the present members of the State Election Board, substitute defendants for the original defendant members. The present Governor of the State, who succeeded to his office since the commencement of the proceedings, did not appear in person or by counsel. His predecessor having been made a party, and having participated in the proceedings, the present Governor is automatically substituted as a party, upon succession to the office. The intervening State Senators and the parties intervening as Oklahomans for Local Government, appeared by their Attorneys, Mr. James Rinehart, Senator Walt Allen, Mr. Leon Hirsh, and Mr. James C. Harkin. Mr. Frank Carter appeared for the Oklahoma Farm Bureau and Mr. Lewis H. Munn. Mr. Richard McKee was allowed to inter-

vene for Mrs. Phyllis P. Brodski, a taxpayer and registered voter. Mr. Tom Tate appeared, as a member of the House of Representatives, and filed a Memorandum. Mr. U. Simpson Tate appeared as attorney for A. Willie James, J. W. Simmons, J. W. Tyler and Amos T. Hall, as interested parties, and has filed Requested Findings of Fact and Conclusions of Law. The Congress of Parents and Teachers, and The League of Women Voters filed separate briefs amicus curiae, in support of their respective plans for reapportionment.

Pursuant to the August 1962 hearing, on Motion of the intervening Senators and Oklahomans for Local Government, to alter and amend the interlocutory decree of June 19, 1962, the Court did clarify the decree to apply to the elections of 1964 and all future elections following the 1962 election, which was then in being. Upon consideration of the remedies urged upon the Court at the August hearing, for redress of the deprivation or impairment of voting rights, vouchsafed to the plaintiff and his class by the Fourteenth Amendment, the Court decided to defer further action to the 1963 general session of the Oklahoma Legislature, to be convened early in the following January. Further hearing on the remedies to be afforded the aggrieved class, was accordingly passed until March 8, 1963.

In the extraordinary circumstances, it was deemed appropriate to promulgate some guidelines or standards which, in the judgment of the Court, would insure compliance with the equal protection of the laws, with respect to the exercise of sufferage rights for the election of members of both branches of the Oklahoma Legislature. Consistent with our previously declared fundamental principle of apportionment based on substantial numerical equality, as firmly enunciated in the Oklahoma Constitution, and our concept of the requirements of the Fourteenth Amendment, we stated that the House of Representatives should

be reapportioned in accordance with the mandate of the Oklahoma Constitution, except as to the ceilings established in Section 10(d), Article V for populous counties. As to that, we were of the view that the arbitrary restrictions thus imposed, was invidiously discriminatory against the plaintiff and his class; hence, constitutionally intolerable. We left the matter of forming Legislative Districts among the counties, for both the House and the Senate, to the discretion of the Legislature, subject only to the requirement of the Oklahoma Constitution and the Fourteenth Amendment with respect to substantial numerical equality and contiguity, "* * * so that each voter of the State will have approximately the same power and influence in electing members of the two houses of the Legislature and in passing legislation, as every other voter." Jones v. Freeman, 146 P.2d 564, 567. In that respect, we recommended the Proposed Order And Decree, filed on July 30, 1962, by the then Acting Attorney General, as a practical and helpful guide to the orderly reapportionment for both Houses. See: Price v. Moss; Oklahoma Farm Bureau v. Moss, 207 F. Supp. 885; Review Denied, Nos. 688-689 (June 11, 1963) 31 L.W. 3405.

Having thus invoked the spirit and intent of the Oklahoma Constitution, as a reliable guide for compliance with the Fourteenth Amendment, and having been assured by the leaders of the Oklahoma Legislature, in open Court, that once their constitutional duty was made clear, it would be discharged with befitting honor and fidelity, we withheld any redress for deprivation of the plaintiffs' rights, by the prolonged malapportionment. We were also mindful of the pendency of an Initiative Petition, providing for a Constitutional Commission, to reapportion the Legislature in accordance with the Oklahoma Constitution, and the prospects of its submission to the people at the November election.

At the November election, the Initiative Petition did receive an affirmative majority of the total votes cast on the Petition (335,045 to 273,287, or a majority of 61,758). The then Governor proclaimed that it had become law. The Commission created thereunder was constituted, and proceeded to reapportion both houses of the Legislature, in accordance with the Oklahoma Constitution, except only to the extent necessary to comply with the guidelines set out in the August 3, 1962 Order of this Court.

The intervening Senators filed in the Oklahoma Supreme Court, an original action to annul the Initiative Petition, on the ground that it had not received the constitutionally required affirmative vote, and to litigate the identical constitutional issues heretofore presented for decision in this proceedings. On petition of the plaintiff and his class, to enjoin the intervenors from prosecuting the original proceedings in the Supreme Court of Oklahoma, we restrained the parties from relitigating the constitutional questions presented here, but deferred to the Oklahoma Court the resolution of the question whether the Initiative Petition had become the law of the State. See: Memorandum Decision Granting Restraining Order, attached as Appendix "A"; Review Denied, Baldwin v. Moss, No. 864 (June 11, 1963), 31 L.W. 3405. In the State proceedings, the Supreme Court determined that the Initiative Petition "failed of adoption for lack of sufficiency of affirmative votes." Allen v. Burkhart, 377 P.2d 821.

When this cause came on for hearing on March 8, 1963, for further consideration of the remedy to be afforded to the plaintiff and his class, the intervening Senators offered Oklahoma Senate Resolution No. 8 and Enrolled House Bill No. 586, and urged them upon the Court, as an appropriate and adequate remedy for the malapportionment of the Oklahoma Legislature under previously existing legislation. They took the position that the legislation complied with

the Oklahoma Constitution and with the equal protection clause of the Fourteenth Amendment. The plaintiff and allied intervenors took the position that the legislation was wholly inadequate to achieve constitutional reapportionment, and to provide the remedy for impairment of their voting rights. The League Of Women Voters and The Congress Of Parents And Teachers offered a plan for reapportionment of both Houses of the Legislature, in accordance with a "standard deviation formula," and testimony in support of it. The plan provides a simple and facile method for reapportioning the Legislature on the basis of population.

The legislation urged upon us by the intervening Senators as an appropriate remedy, has passed both Houses of the Legislature, and has been signed by the Governor, but no effort was made to attach the emergency clause. Article V, Section 58 of the Oklahoma Constitution provides that such legislation does not become effective until ninety (90) days after the adjournment of the legislative session at which the legislation was passed, i.e., June 14, 1963. Moreover, under Article V, Sections 1 and 4 of the Oklahoma Constitution, the legislation may be referred to a vote of the people, on petition of five per cent (5%) of the voters, filed with the Secretary of State, within ninety (90) days after the final adjournment of the session, and before the legislation becomes effective.

Since the legislation is not presently effective and may never be effective, it cannot presently affect the rights of the complaining parties, and they, therefore, have no standing to challenge its constitutionality. In this posture, it would be inappropriate for this Court to adjudge the purely hypothetical constitutional question. See: Coffman v. Breeze, 323 U.S. 316; Federation of Labor v. McAdory, 325 U.S. 450; Rescue Army v. Municipal Court of Los Angeles, 331 U.S. 549; and City of Oklahoma City v. Dulick (10 CA), ___ F.2d ___.

But even so, we are immediately concerned with an appropriate remedy for the deprivation of a civil right, and while time is not of the essence of the right, it is, to be sure, an important consideration, if relief is to be granted in the foreseeable future. It is important to note that candidates for legislative office, the term of which expires in November, 1964, must file notification and declaration of candidacy with the Election Board during the filing period, beginning the fourth Monday in February, before the day fixed by law for the regular primary election in 1964. See: 26 O.S. §163. As the matter now stands, the present legislative apportionment laws have been declared prospectively null and void, and if the recent legislation should not become effective by reason of the inherent contingencies, there can be no valid election for the legislative offices involved. Enrolled House Bill No. 586 and Senate Resolution No. 8, having been passed and signed by the Governor, cannot be recalled for amendment. If they should be referred to referendum, they must be voted up or down—they either become the law as enacted, or nullified by a vote of the people.

In these circumstances, it becomes manifestly important to settle the apportionment law applicable to the forthcoming election, both in the interest of the plaintiff-electors and those who are to seek legislative office. We are thus brought to the necessity of examining the inchoate legislation, for the purpose of deciding whether, as applicable law, it would afford adequate redress for the deprivation of a civil right. We have examined the legislation with care, and have come to the conclusion that it does not afford the remedy which the Federal Constitution commands.

The House Bill purports to comply with the Oklahoma Constitution. It does not purport to comply with the guidelines set out in the August 3, 1962 Order of this Court. But, the legislation is not, for that reason, an unaccept-

able remedy for invidious discrimination. The Fourteenth Amendment requires precise equality among electors for state-wide offices, or for an office within an electorial district. See: Gray v. Sanders, 372 U.S. 368. But, it does not demand precise political equality as between qualified voters, for the election of legislative representatives from different electorial districts. We know that there is "room for weighting" and "rough accomodation," within the framework of the equal protection clause of the Fourteenth Amendment. Baker v. Carr, 369 U.S. 186; and Norvell v. Illinois, ... U.S. ..... (Oct. 1962). Our guidelines were not promulgated as an inexerable rule or guide for the achievement of the equal protection of the laws, in the apportionment of the Oklahoma Legislature. We recognized then, as indeed we do now, that the equal protection clause requires only a rational basis for disparity in voting strength, for legislative representation. Throughout this litigation, however, we have proceeded upon the premise that the gross disparity and deliberate refusal to reapportion, in accordance with the plain mandate of the Oklahoma Constitution, i.e., See: Radford v. Gary, 145 F.Supp. 541, is prima facie evidence of a hostile disposition to discriminate. And, we have called upon those who would support the disparity to show a rational basis for it.

The vice of this most recent legislation lies in the absence of any rational basis for the manifest disparity. In practical effect, it provides little or no relief for malapportionment under antecedent laws. Under this legislation, the Representative Districts vary in population from 11,700 to 62,800. We think it more than coincidental that whereas, under antecedent laws, 29 per cent of the people of Oklahoma could elect a majority of the lower House, under the prospective House Bill, 30.2 per cent can elect a majority of the lower House in the second session of this decennial; 31.2 per cent can elect a majority in the third session; 33.5

per cent in the fourth session; and, in the fifth session, 28.5 per cent may elect the majority. Thus, in this decade, an average of 31 per cent of the people would elect a majority of the lower house, i.e., a 2 per cent increase over the antecedent discriminatory laws. This result is brought about by adherence to the arbitrary ceilings on the number of representatives to be elected from the most populous counties, under Section 10(d), and through skillful manipulation of the "floats," provided in Section 10(e), Article V, of the Oklahoma Constitution.

The same invidious purpose is even more manifest in Senate Resolution No. 8, where the disparities between districts run the scale from 115,300 to 24,400, or a ratio of 4.73 to 1. No rational basis was shown for this disparity. The Resolution does not purport to comply with either the Oklahoma Constitution, or with this Court's guidelines for compliance with the equal protection clause of the Fourteenth Amendment. The Oklahoma Constitution specifically provides that each of the "* * * [electorial] districts shall contain as near as may be an equal number of inhabitants, such population to be ascertained by the next preceding Federal census, or in such manner as the Legislature may direct." Article V, Section 9(a). Presuming to act under color of the latter clause of this constitutional provision, the Oklahoma Legislature in Senate Resolution No. 8 undertook to depart from the decennial Federal census, for what it called the "permanent population standard," for determining representation. In the first place, a double standard was used to arrive at the legislated apportionment, in that the "permanent population standard" was used in Oklahoma and Tulsa Counties, while the Federal census was used elsewhere. In the second place, the proof shows that the apportionment in Oklahoma and Tulsa Counties is not truly based upon the erected standard. There was nothing to indicate, or from which it can be said, that the classi-

fication rests upon any rational basis. Such gross disparity cannot be justified by "historical precedents," as in Maryland Committee For Fair Representation v. Tawes, 184 A.2d 715. Nor, by traditional legislative autonomy of counties, as in Sobel v. Adams, 208 F.Supp 316. Nor, by the political, social and economic heterogeneity, recognized in Lisco v. McNichols, 208 F.Supp 471. We think our situation more nearly like Sims v. Frink, 208 F.Supp 431. From the proof before us, it is manifest that the legislative apportionment, under Senate Resolution No. 8, is a patch-work of political maneuvering and manipulation, to perpetuate the same invidious apportionment which prevailed under the antecedent laws. One of the intervening Senators, attorney and spokesman for the group, expressed it quite succinctly and truthfully, we think, when he testified simply that the legislation "was all the Senate would go for."

Intervenors, A. Willie James, J. W. Simmons, J. W. Tyler and Amos T. Hall, specifically attack this legislation as operating to deprive the negro voters in Oklahoma and Tulsa Counties of the equal protection of the laws. They contend that the prescribed districts within those Counties are gerrymandered, in a manner to effectively discriminate against their race, to the end that their voting strength will be unconstitutionally impaired. In view of the immaturity of the legislation, and our treatment of it for the purpose of this case, we do not reach the issue presented by these Intervenors.

Since the enactment of Enrolled House Bill No. 586 and Senate Resolution No. 8, and following the March 8th hearing of this case, the Legislature has passed Enrolled Joint Senate Resolution No. 4. The Resolution refers to the people proposed amendments to the Oklahoma Constitution, providing for reapportionment of both branches of the Oklahoma Legislature, in accordance with a new formula set forth therein, and providing built-in constitutional means

for effecting the reapportionment. It provides that the amendments shall be submitted for adoption or rejection, on the date of the next run-off primary election, which according to State law, will occur in 1964. If the amendments should be submitted and adopted, the Legislature convening in 1965 must act within sixty (60) days, upon failure of which the Apportionment Commission created by the amendments, will proceed to do so, in accordance with the proposed constitutional formula. No one has tendered this Joint Senate Resolution as an appropriate remedy in this case, and we take notice of it only for the purpose of determining whether, in view of its provisions and likelihood of its passage, we should again stay our hand, and await the outcome. In the light of the initiative and referendum history of the State of Oklahoma (see: Appendix—Title 34, O.S.A.) the adoption of the amendments as the constitutional law of this State, seems improbable. Moreover, there is nothing on the face of the proposed amendments to justify the gross disparity between electoral districts for both Houses, as provided therein.[1] In any event, we shall say

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[1] Section 1 of the Joint Resolution provides that the State shall be apportioned into 48 Senatorial Districts, in the following manner: "• • • the nineteen most populous counties, as determined by the most recent Federal Decennial Census, shall constitute nineteen senatorial districts with one senator to be nominated and elected from each district; the fifty-eight less populous counties shall be joined into twenty-nine two-county districts with one senator to be nominated and elected from each of the two-county districts • • •." A rough calculation, based upon the Federal census, will show that the disparities between the 19 most populous electoral districts will range from less than 30,000 in the smallest of the one-county senatorial districts, to approximately 440,000 in the largest of the one-county senatorial districts. The disparity is even greater (less than 15,000 to approximately 440,000) between the least populous two-county district and the most populous one-county district. The Section creating these districts provides that "consideration shall be given to population, compactness, area, political units, historical precedents, economic and political interests, contiguous territory, and other major factors,

nor do nothing to interfere with the right of the people to speak freely upon the question. Meanwhile, the improbabilities of its adoption and its doubtfulness as a remedy, will not justify further stay of these proceedings.

After careful consideration of all the exigencies, we have reluctantly decided to reapportion the Oklahoma Legislature by judicial decree, because we are convinced, from all that has transpired in this prolonged proceedings, that the Legislature, as now constituted, is either unable or unwilling to reapportion itself, in accordance with our concept of the requirements of the equal protection clause of the Fourteenth Amendment. We assume this responsibility, fully aware of its gravity and perplexity. We know, of course, that the function of apportioning the State Legislature is essentially legislative in nature; one which the Courts have never before undertaken; and one from which we may very well be precluded, even in the face of inadequate redress for the deprivation of civil rights. We know that the judicial power to grant redress for deprivation of a civil right is usually a negative power, effected by conventional injunctive decree. It may well be that the affirmative relief we grant is in excess of our judicial power. If so, we will know in due time, for the questions are squarely presented, and will undoubtedly be authoritatively decided during the next term of the Supreme Court. See: WMCA, Inc. v. Simon, No. 460; Wesberry v. Vandiver, No. 507; Reynolds v. Sims, No. 508; Vann v. Frank, No. 540; Mary-

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[1] (Continued)

* * *" but there is nothing to indicate that consideration was given to these factors in the creation of the districts, which would be immutably created, unless and until changed by further constitutional amendment.

The formula provided in the amendment for reapportionment of the House of Representatives, gives every county one Representative, and by the utilization of ratios, progressively restricts representation in the most populous counties.

land Committee On Fair Representation v. Tawes, No. 554; McConnell v. Frink, No. 610; Davis v. Mann, No. 797; and Wright v. Rockefeller, No. 950 (June 11, 1963) 31 L.W. 3404. Meanwhile, we shall proceed on the fundamental premise that equity is never impotent before the law.

In the suggested Findings of Fact and Conclusions of Law, filed by the intervening Senators, we are asked to abstain, and to await adjudication of the constitutionality of this most recent legislation by the State courts. But, in the circumstances, we think it would be unwise and, in effect, a deprivation of the constitutional rights of the plaintiff and his class, to await State court proceedings, which have not been instituted and which, in any event, would not resolve the ultimate question of the appropriateness of the remedy for the redress of a civil right, asserted in this proceedings. The suggestion will, therefore, be denied.

This brings us to the form of relief which is to be afforded, or more specifically, the form of Order for the remedy. While, as we have seen, the equal protection clause of the Fourteenth Amendment is content with fundamental fairness in the exercise of voting rights, *if apportionment is to be our lot, we should not stop short of the ideal.* Of all the plans for reapportionment which have been urged upon us, as an appropriate remedy, we have been favored with a formula which approaches the ideal, to reapportion the Legislature "as near as may be to the equal number of inhabitants" of each district. This plan, known in the proof here as Model C, is submitted by The Bureau of Government Research, of the University of Oklahoma. It represents the judgment of the Acting Attorney General of the State, when this matter was previously under consideration for appropriate remedy. It is an embodiment of the best thinking and contribution of the political scientists and statisticians, who have testified in this case, concerning the critical question of discrimination. We adopted it as

our guideline in our August 3rd Order. When State Question No. 408, Initiative Petition No. 271, providing for a Commission to reapportion the Legislature, was declared to have passed, by proclamation of the Governor, the *de facto* Commission, created thereunder, adopted the Model as affording the most effective plan for reapportioning the Legislature, in accordance with the Oklahoma Constitution and the guidelines of our August 3, 1962 Order. We now adopt it as the pattern for Final Judgment of this Court, and in accordance with the following Order Of Reapportionment.

ORDER OF REAPPORTIONMENT

The Legislature of the State of Oklahoma is hereby apportioned, as hereinafter provided, for the purposes of all future elections within the Decennial, beginning the 16th day after the general elections in November, 1962 and ending the 15th day after the general election in November, 1972, unless and until the Legislature, elected and constituted by virtue of this apportionment, shall reapportion itself, in accordance with the requirements of the equal protection clause of the Fourteenth Amendment:

The ten-year period beginning the 16th day after the general election in November 1962, and ending the 15th day after the general election in November 1972, shall constitute a Decennial Legislative Period of the Legislature of the State of Oklahoma, and said period is hereby divided into five legislative periods of two years each.

The first legislative period shall begin on the 16th day after the general election in November 1962, and end with the 15th day after the general election in November 1964. Senators and representatives heretofore elected at said November 1962 general election shall serve during said first legislative period.

The second legislative period shall begin on the 16th day after the general election in November 1964, and end with the 15th day after the general election in November 1966.

The third legislative period shall begin on the 16th day after the general election in November 1966, and end with the 15th day after the general election in November 1968.

The fourth legislative period shall begin on the 16th day after the general election in November 1968, and end with the 15th day after the general election in November 1970.

The fifth legislative period shall begin on the 16th day after the general election in November 1970.

THE SENATE

The Oklahoma State Senate shall consist of 44 members, who shall be apportioned during the second, third, fourth and fifth legislative periods prescribed herein among the 44 senatorial districts of the State. The terms of office of Senators elected in the November 1960 general election, as well as those elected at the November 1962 election, will end with the 15th day after the general election of November 1964. The apportionment of the counties of the State into said 44 senatorial districts, in each of which one Senator will be nominated and elected, shall be as follows:

DISTRICT NUMBER		NUMBER OF SENATORS
District 1	Beaver, Cimarron, Harper, Texas, Woods, Woodward	1
District 2	Beckham, Ellis, Greer, Roger Mills, Washita	1
District 3	Harmon, Jackson, Tillman	1
District 4	Blaine, Caddo, Kiowa	1
District 5	Alfalfa, Custer, Dewey, Grant, Major	1

District 6	Kingfisher, Lincoln, Logan	1
District 7	Garfield	1
District 8	Canadian, Grady	1
District 9	Cotton, Jefferson, Stephens	1
District 10-11	Comanche	2
District 12	Carter, Love, Marshall	1
District 13	Atoka, Garvin, Johnston, Murray	1
District 14	Pontotoc, Seminole.	1
District 15	McClain, Pottawatomie	1
District 16	Cleveland	1
District 17-24	Oklahoma	8
District 25	Payne	1
District 26	Noble, Osage, Pawnee	1
District 27	Kay	1
District 28	Nowata, Washington	1
District 29-35	Tulsa	7
District 36	Okmulgee, Wagoner	1
District 37	Creek, Okfuskee	1
District 38	Coal, Hughes, Pittsburg	1
District 39	Bryan, Choctaw, Latimer, Pushmataha	1
District 40	LeFlore, McCurtain	1
District 41	Cherokee, Haskell, McIntosh, Sequoyah	1
District 42	Muskogee	1
District 43	Adair, Delaware, Ottawa	1
District 44	Craig, Mayes, Rogers	1
		44

PROVIDED, however, that until the Legislature, as apportioned hereunder, shall by appropriate legislation prescribe the boundaries of the Districts, within any one County of the State entitled to elect more than one Senator, under the provisions of this Order, the candidates for such senatorial offices shall be nominated and elected at large within such Counties; and,

PROVIDED FURTHER, that each such senatorial office shall be designated and distinguished numerically, accord-

ing to the number of Senators and numerical Districts to which such County is entitled, and all filings of notification and declaration for nomination and election, pursuant to 26 O.S. §163, to any of the offices herein provided, shall designate the number of the office to which the filings are intended to apply.

Senators elected from even numbered Districts for the above second legislative period shall hold office until the 15th day succeeding the general election in November 1966, and Senators elected from the odd numbered Districts for said legislative period shall hold office until the 15th day succeeding the general election in November 1968. The office number and term, in Counties entitled to more than one Senator, shall correspond to the District number and term, as herein provided. The term of office of each Senator thereafter elected shall be four years.

The Election Board of the State of Oklahoma, and all those acting by and under its authority, are hereby ordered and directed to accept filings and conduct elections, in accordance with the provisions of this Order and the applicable provisions of Title 26, Oklahoma Statutes, as amended, and they are hereby enjoined and restrained from accepting filings or conducting elections in any manner inconsistent with the provisions of this Order and the statutes of the State of Oklahoma, not inconsistent herewith.

THE HOUSE OF REPRESENTATIVES

Representatives assigned to each County for each of the five legislative periods, other than for the first period, shall be elected at the general election in the month of November, next preceding the commencement of the respective legislative period.

The representation in the House of Representatives of each County of Oklahoma for the last four legislative periods defined herein, shall be the number listed in the

table hereinafter set forth. The number of representatives assigned to each County for each of the five legislative periods, other than for the first period, is shown in the following table. The name of each County and the names of attached Counties are given in said table, and the number of representatives to which same are entitled are listed under the columns designated for said legislative periods, as follows:

COUNTIES	2ND LEG. PERIOD	3RD LEG. PERIOD	4TH LEG. PERIOD	5TH LEG. PERIOD
Alfalfa-Grant	1	1	1	1
Atoka-Coal	1	1	1	1
Beaver-Harper	1	1	1	1
Beckham-Roger Mills	1	1	1	1
Blaine-Kingfisher	1	1	1	1
Cimarron-Texas	1	1	1	1
Cotton-Jefferson	1	1	1	1
Dewey-Major	1	1	1	1
Ellis-Woodward	1	1	1	1
Greer-Harmon	1	1	1	1
Haskell-McIntosh	1	1	1	1
Johnston-Murray	1	1	1	1
Latimer-Pushmataha	1	1	1	1
Love-Marshall	1	1	1	1
Noble-Pawnee	1	1	1	1
Nowata-Craig	1	1	1	1
Adair	1	1	1	1
Bryan	1	1	1	1
Caddo	1	1	1	2
Canadian	1	1	1	1
Carter	2	2	1	1
Cherokee	1	1	1	1
Choctaw	1	1	1	1
Cleveland	2	2	2	2
Comanche	4	4	4	4
Creek	2	2	1	1

Custer	1	1	1	1
Delaware	1	1	1	1
Garfield	2	2	2	2
Garvin	1	1	1	2
Grady	1	1	2	1
Hughes	1	1	1	1
Jackson	1	1	1	2
Kay	2	2	2	2
Kiowa	1	1	1	1
LeFlore	1	1	1	2
Lincoln	1	1	1	1
Logan	1	1	1	1
McClain	1	1	1	1
McCurtain	1	1	1	1
Mayes	1	1	1	1
Muskogee	3	3	2	2
Okfuskee	1	1	1	1
Oklahoma	19	19	19	19
Okmulgee	1	2	2	1
Osage	2	1	1	1
Ottawa	1	1	2	1
Payne	2	2	2	2
Pittsburg	1	2	2	1
Pontotoc	2	1	1	1
Pottawatomie	2	2	2	2
Rogers	1	1	1	1
Seminole	1	1	1	1
Sequoyah	1	1	1	1
Stephens	2	2	1	1
Tillman	1	1	1	1
Tulsa	15	15	15	15
Wagoner	1	1	1	1
Washington	2	2	2	2
Washita	1	1	1	1
Woods	1	1	1	1
	109	109	107	107

PROVIDED, however, that until the Legislature, as apportioned hereunder, shall by appropriate legislation prescribe the boundaries of the Districts, within any one County of the State entitled to elect more than one Representative under the provisions of this Order, the candidates for such representative offices shall be nominated and elected at large within such Counties; and,

PROVIDED FURTHER, that each such office shall be designated and distinguished numerically, according to the number of Representatives to which such County is entitled, and all filings of notification and declaration for nomination and election, pursuant to 26 O.S. §163, to any of the offices herein provided, shall designate the number of the office to which the filings are intended to apply.

The Election Board of the State of Oklahoma, and all those acting by and under its authority, are hereby ordered and directed to accept filings and conduct elections, in accordance with the provisions of this Order and the applicable provisions of Title 26, Oklahoma Statutes, as amended, and they are hereby enjoined and restrained from accepting filings or conducting elections in any manner inconsistent with the provisions of this Order and the statutes of the State of Oklahoma, not inconsistent herewith.

Dated this 17th day of July, 1963.

/s/ Alfred P. Murrah
Alfred P. Murrah

/s/ Ross Rizley
Ross Rizley

/s/ Fred Daugherty
Fred Daugherty

[APPENDIX]

MEMORANDUM OF DECISION GRANTING RESTRAINING ORDER

By Order entered January 15, 1963, this Court restrained the intervening senators from further prosecuting in the Oklahoma Supreme Court an original action involving constitutional issues relating to the Oklahoma apportionment laws which are now in process of litigation in this Court and in this suit. Inasmuch as the intervenors have filed notice of appeal from our Order to the Supreme Court of the United States and to the Court of Appeals, and in view of the protracted course of the litigation, it seems appropriate to bring the Order into its proper context.

When this suit was commenced pursuant to Baker v. Carr, the responsible executive state officers who were made defendants all promptly entered their appearance and consented to the jurisdiction of the Court over the subject matter and their person. The Governor, the Secretary of State, the State Treasurer and the State Election Board all answered confessing the truth of the complaint, and agreeing that the complainant and his class were entitled to the relief sought. The Governor, joined by the other defendants, freely confessed that all available state remedies had been exhausted, and that recourse to the federal court under Baker v. Carr was the only remaining course of action. And see statement of the case in *Moss* v. *Burkhart*, 207 F.Supp 885, 889.

At the April 23, 1962 hearing, on plaintiff's application to enjoin the forthcoming May 1st primary election, the responsible defendants urged us to grant an injunction; the Governor offered to convoke an extraordinary session of the Legislature for the purpose of enacting apportionment laws in compliance with the mandate of the Constitution of the State of Oklahoma and the equal protection clause of the 14th Amendment.

After the hearing, but before final decision, a group of individuals calling themselves "Oklahomans for Local Government" were permitted to intervene. They suggested the absence of necessary parties-defendant and further suggested that in view of the confessions of the defendant-state officials, the proceedings was not adversary, and that there should be a realignment of the parties. They specifically denied malapportionment of the Legislature under existing laws and offered to show a rational basis for the existing apportionment. They affirmatively alleged that the apportionment in accordance with the mandate of the Oklahoma Constitution would operate to deny them and their class the equal protection of the laws guaranteed by the 14th Amendment. Finally, it was alleged that the power to reapportion was vested exclusively in the State Legislature, and that it should be afforded an opportunity to perform its constitutional function either in a special session or the next general session.

At the conclusion of the hearing, the Court sustained its jurisdiction of the subject matter as a justiciable controversy. The majority of the Court refused to enjoin the forthcoming primary election, but called attention to the manifest disparity in the elected representation of both branches of the Oklahoma Legislature, and suggested that on the face of the disparity, the plaintiff was entitled to relief under the plain mandate of the Oklahoma Constitution and the 14th Amendment to the federal Constitution. The case was set for trial approximately 50 days later on the issue of rationality of the admitted disparity. When the case came on for trial, plaintiff and those aligned with him, offered evidence without objection tending to show that the disparity in the legislative apportionment was invidiously discriminatory; that apportionment on a numerical basis was the starting point to achieve equal protection of the laws with respect to the election of representatives to the Oklahoma Legislature. The Attorney General of the

State submitted a formula for reapportionment based primarily upon the requirements of the Oklahoma Constitution, modified to comply with the requirements of the 14th Amendment to the federal Constitution. The first intervenors, though present by counsel and participating, offered no evidence on the issue of rationality. Based upon the evidence adduced, the trial court found that the apportionment was invidiously discriminatory, and that the underlying election laws were prospectively void. But no final relief was decreed or granted. Instead, the case was passed until September 10, 1962 for determination of appropriate remedies. At the same time the Court suggested three probable remedies: (1) apportionment by the Legislature in special session; (2) the pending initiative petition; and (3) judicial intervention only as a last resort. And, in that connection, we noted that in the event it became necessary to bring about reapportionment by judicial intervention, it would be time enough to hear and consider any factors which might enter into the reapportionment equation. See Moss v. Burkhart, p. 895.

Before the date set for the hearing on September 10, the first intervenors moved to alter, amend or clarify the decree. On the day before the motion came on for hearing, and on July 30, the intervening senators, represented by the same counsel who represented the first intervenors, moved for permission to intervene, alleging that they should have been joined as parties from the beginning, and prayed that they be permitted to intervene to protect themselves and "their own civil and political rights." Intervention was allowed. In their answer, they acknowledged jurisdiction of the Court to determine the applicability of the 14th Amendment to the rights and claims of the plaintiff, but denied the power of the court to alter or revise the structure of the legislative department of the State in a manner to interfere with the existence, validity or the incumbency of their respective elective offices. They specifically alleged

that any apportionment based upon census population, as provided in the Oklahoma Constitution, would be invidiously discriminatory against them and in contravention of their rights under the 14th Amendment. Finally, they pray "that the issues raised by the plaintiffs and the defendants as herein controverted be tried and determined in the regular course, fully protecting the rights and interest of these answering defendants under the federal Constitution and laws. * * *"

At the hearing on the motion to modify the June 19 interlocutory decree, one of the intervening senators, apparently appearing on behalf of all of the intervening senators, testified in response to direct questions from the court and counsel that he would "vote for * * * and support * * * with all my might and vigor * * *" the final adjudication of the constitutional issues in this court.

Pursuant to the hearing on the motion to alter and amend, the Court clarified its interlocutory decree of June 19, to specify that it did not affect the validity of the forthcoming general election; and that the interlocutory decree applied prospectively to elections in 1964 and thereafter. Further hearing in the case was set approximately 5 months later on March 8, 1963. Meanwhile, a new Legislature would have been elected and in session for approximately 60 days. As a guideline for an appropriate remedy for the malapportionment, the Court expressed the positive view that the Legislature should be reapportioned substantially in accordance with the Oklahoma Constitution and in accordance with a plan and formula submitted by the State Attorney General.

The initiative referendum providing in substance for the creation of a constitutional commission to reapportion the Legislature in accordance with the existing provisions of the Oklahoma Constitution was submitted to the people on November 6, and the question arose whether the initia-

tive petition had received the required vote of the people and had become the law of the land. The plaintiffs and the responsible state officials sought to clarify the question in this Court as a necessary incident to the determination of appropriate remedies.

About the same time, the intervenors filed a proceedings, first, in the State District Court and then an original proceedings in the Supreme Court of Oklahoma. The original proceedings was an action in the nature of a bill quia temit "to prevent anticipated mischiefs which could not after their occurrence be adequately redressed." The first cause of action sought a declaration to the effect that the initiative petition did not receive the number of required votes and did not become law. The second and third causes of action alleges substantially the same subject matter set forth in their petition for intervention in this case, and seeks substantially the same affirmative relief. When the plaintiff's motion to declare that the initiative petition had become the law of the State came on for hearing in this case, our attention was called to the pendency of the original proceedings in the state court. We thereupon deferred consideration of the same in deference to action by the State Supreme Court. That Court did assume jurisdiction of the first cause of action, but reserved its ruling "as to whether jurisdiction of the remaining causes of action pleaded by the applicants will be assumed." The Oklahoma Court has now determined that the initiative petition "failed of adoption for lack of sufficiency of affirmative votes." Allen, et al. v. Burkhart, et al. (Okla.), decided Dec. 22, 1962. That decision is of course binding here. Thereafter the intervenors amended their petition in the Supreme Court of Oklahoma to reassert the same matters and issues originally pleaded here, and on which the Oklahoma Supreme Court had reserved jurisdiction.

As the litigation now stands, the intervenors are in courts of two sovereign jurisdictions, alleging substantially the same subject matter and seeking substantially the same relief. The gloss of the pleadings may be somewhat different, but the subject matter of the lawsuits and the relief sought are essentially the same. The jurisdiction of both courts may be conceded, as indeed it is. The decisive point of consideration is that early in the course of this litigation, the intervenors invoked this court's jurisdiction and consented to its processes. They now seek to circumvent or frustrate that jurisdiction by provoking unseemly state-federal conflict over the same subject matter. In substance, they would remove a case into which they have intervened to another forum. In this posture, it seems important to sensitive areas of this kind that the Court having first acquired jurisdiction of the subject matter should proceed to a final determination of the tedious questions involved. Any attempted division or dual exercise of the concurrent jurisdiction can lead only to unwarranted confusion, and ought to be avoided. We think that the proper administration of justice and the maintenance of a harmonious state-federal relationship require us to restrain the intervenors from taking their lawsuit elsewhere.

APPENDIX II(a)

(a) Article V, Sections 1-4, incl., Constitution of Oklahoma (Volume I, pp. 62-63, Oklahoma Statutes 1961).

§ 1. Legislature—Authority and composition—Powers reserved to people

The Legislative authority of the State shall be vested in a Legislature, consisting of a Senate and a House of Representatives; but the people reserve to themselves the power to propose laws and amendments to the Constitution

and to enact or reject the same at the polls independent of the Legislature, and also reserve power at their own option to approve or reject at the polls any act of the Legislature.

§ 2. Designation and definition of reserved powers—Determination of percentages

The first power reserved by the people is the initiative, and eight per centum of the legal voters shall have the right to propose any legislative measure, and fifteen per centum of the legal voters shall have the right to propose amendments to the Constitution by petition and every such petition shall include the full text of the measure so proposed. The second power is the referendum and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health, or safety), either by petition signed by five per centum of the legal voters or by the Legislature as other bills are enacted. The ratio and per centum of legal voters hereinbefore stated shall be based upon the total number of votes cast at the last general election for the State office receiving the highest number of votes at such election.

§ 3. Petitions—Veto power—Elections—Time of taking effect—Style of bills—Duty of legislature

Referendum petitions shall be filed with the Secretary of State not more than ninety days after the final adjournment of the session of the Legislature which passed the bill on which the referendum is demanded. The veto power of the Governor shall not extend to measures voted on by the people. All elections on measures referred to the people of the State shall be had at the next election held throughout the State, except when the Legislature or the Governor shall order a special election for the express purpose of making such reference. Any measure referred to the people by the initiative shall take effect and be in force when it shall have been approved by a majority of the votes cast

in such election. Any measure referred to the people by the referendum shall take effect and be in force when it shall have been approved by a majority of the votes cast thereon and not otherwise.

The style of all bills shall be: "Be it Enacted By the People of the State of Oklahoma."

Petitions and orders for the initiative and for the referendum shall be filed with the Secretary of State and addressed to the Governor of the State, who shall submit the same to the people. The Legislature shall make suitable provisions for carrying into effect the provisions of this article.

§ 4. Referendum against part of act

The referendum may be demanded by the people against one or more items, sections, or parts of any act of the Legislature in the same manner in which such power may be exercised against a complete act. The filing of a referendum petition against one or more items, sections, or parts of an act shall not delay the remainder of such act from becoming operative.

(b) Article XXIV, Sections 1 and 3, Constitution of Oklahoma (Volume I, p. 137, Oklahoma Statutes 1961).

§ 1. Amendments proposed by Legislature—Submission to vote

Any amendment or amendments to this Constitution may be proposed in either branch of the Legislature, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered in their journals and referred by the Secretary of State to the people for their approval or rejection, at the next regular general election, except when the Legislature, by a two-thirds vote of each house, shall order a special election for that purpose. If a majority of

all the electors voting at such election shall vote in favor of any amendment thereto, it shall thereby become a part of this Constitution.

If two or more amendments are proposed they shall be submitted in such manner that electors may vote for or against them separately.

No proposal for the amendment or alteration of this Constitution which is submitted to the voters shall embrace more than one general subject and the voters shall vote separately for or against each proposal submitted; provided, however, that in the submission of proposals for the amendment of this Constitution by articles, which embrace one general subject, each proposed article shall be deemed a single proposal or proposition. As amended State Question No. 353, Referendum Petition No. 100. Adopted primary election July 1, 1952.

§ 3. Right of amendment by initiative petition not impaired

This article shall not impair the right of the people to amend this Constitution by a vote upon an initiative petition therefor.

APPENDIX VIII.

Article V, Sections 9, 9a, 9b and 10, Constitution of Oklahoma (Volume 1, pp. 64-65, Oklahoma Statutes 1961).

§ 9. Membership and term of office

The Senate, except as hereinafter provided, shall consist of not more than forty-four members, whose term of office shall be four years: Provided, That one senator elected at the first election from each even numbered district shall hold office until the fifteenth day succeeding the regular state election in Nineteen Hundred and Eight, and one

elected from each odd numbered district at said first election shall hold office until the fifteenth day succeeding the day of the regular state election in Nineteen Hundred and Ten: And Provided further, That in districts electing two senators, the two elected at the first election shall cast lots in such manner as the Legislature may prescribe to determine which shall hold the long and which the short term.

§ 9(a). Senatorial districts—Additional senators

At the time each senatorial apportionment is made after the year Nineteen hundred and Ten the State shall be divided into forty-four districts to be called senatorial districts, each of which shall elect one senator; and the Senate shall always be composed of forty-four senators, except that in event any county shall be entitled to three or more senators at the time of any apportionment such additional senator or senators shall be given such county in addition to the forty-four senators and the whole number to that extent. Said districts shall be numbered from One to Forty-four inclusive, and each of said districts shall contain as near as may be an equal number of inhabitants, such population to be ascertained by the next preceding Federal census, or in such manner as the Legislature may direct, and shall be in as compact form as practicable and shall remain unaltered until the next decennial period, and shall at all times consist of contiguous territory.

§ 9(b). Division of counties, towns and wards—Equality of population

No county shall ever be divided in the formation of a Senatorial district except to make two or more senatorial districts wholly in such county. No town, and no ward in a city, when constituting only one voting precinct, shall be divided in the formation of a senatorial district, nor shall any senatorial district contain a greater excess in population over an adjoining district in the same county than the population of a town, or ward in a city, constituting only

one voting precinct therein, adjoining such district. Towns, and wards in cities, constituting only one voting precinct, which may, from their location, be included in either of two senatorial districts, shall be so placed as to make such districts most nearly equal in number of inhabitants.

§ 10. Number and terms—Meeting of first legislature—Apportionment—Review of apportionment

The House of Representatives, until otherwise provided by law, shall consist of not more than one hundred and nine members who shall hold office for two years: Provided, That the representatives elected at the first election shall hold office until the fifteenth day succeeding the day of the regular state election in Nineteen Hundred and Eight: And Provided, That the day on which state elections shall be held shall be fixed by the Legislature.

(a) The first Legislature shall meet at the seat of government upon proclamation of the Governor on the day named in said proclamation, which shall not be more than thirty days nor less than fifteen days after the admission of the State into the Union.

(b) The apportionment of this State for members of the Legislature shall be made at the first session of the Legislature after each decennial Federal census.

(c) The whole population of the State as ascertained by the Federal census, or in such manner as the Legislature may direct, shall be divided by the number one hundred and the quotient shall be the ratio of representation in the House of Representatives for the next ten years succeeding such apportionment.

(d) Every county having a population equal to one-half of said ratio shall be entitled to one representative; every county containing said ratio and three-fourths over shall be entitled to two representatives, and so on, requiring after the first two an entire ratio for each additional

representative: Provided, That no county shall ever take part in the election of more than seven representatives.

(e) When any county shall have a fraction above the ratio so large that being multiplied by five the result will be equal to one or more ratios, additional representatives shall be apportioned for such ratio among the several sessions of the decennial period. If there are two ratios, representatives shall be allotted to the fourth and third sessions, respectively; if three, the third, second, and first sessions, respectively; if four, to the fourth, third, second, and first sessions, respectively.

(f) Any county forming with another county or counties a representative district during one decennial period, if it has acquired sufficient population, at a fixed decennial period, shall be entitled to an additional representative, if there shall be left in the district from which it shall have been separated a population sufficient for a representative. No such change shall be made except at the regular decennial period for the apportionment of representatives.

(g) If in fixing any decennial ratio, a county previously a separate representative district shall have less than the number required by the ratio for a representative, such county shall be attached to a county adjoining it and become a part of such representative district.

(h) No county shall ever be divided in the formation of representative districts except to make two or more representative districts in such county. No town, or ward in a city, where it constitutes only one voting precinct, shall be divided in the formation of representative districts, nor shall any representative district contain a greater excess in population over an adjoining district in the same county than the population of a town or ward in a city, constituting only one voting precinct adjoining such district. Counties, towns, or wards in cities, constituting only one voting pre-

cinct, which, from location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants.

(i) Ascertaining the ratio of representation according to the Federal census, or such other enumeration as the Legislature may provide, and attaching any county, previously having a separate representative but found to have less than the number required by the ratio, to an adjoining county; and determining the number of representatives each county or district shall be entitled to, and for what sessions of the Legislature within the next decennial period; and apportioning the Senators, shall be done by the Legislature and be presented to the Governor for his approval in the same manner as other bills which may be passed by the Legislature.

(j) An apportionment by the Legislature shall be subject to review by the Supreme Court at the suit of any citizen, under such rules and regulations as the Legislature may prescribe. And such court shall give all cases involving apportionment precedence over all other cases and proceedings; and if said court be not in session, it shall convene promptly for the disposal of the same.

APPENDIX IX.

(a) Article V, Section 11, Constitution of Oklahoma. (Volume I, pp. 65-66, Oklahoma Statutes 1961).

§ 11. Senatorial districts—Composition and number of senators

Until the apportionment is made by the Legislature after the next Federal decennial census, the State, except as otherwise provided, shall be divided into thirty-three senatorial districts, each of which shall be composed of the counties as named, shall be numbered and elect senators as follows, namely:

First, Beaver, Cimarron, Harper, and Texas, one senator; Second, Beckham, Dewey, Ellis, and Roger Mills, two senators; Third, Woods and Woodward, one senator; Fourth, Greer, one senator; Fifth, Jackson and Tillman, one senator; Six, Custer, Kiowa, and Washita, two senators; Seventh, Alfalfa and Major, one senator; Eighth, Garfield, one senator; Ninth, Osage, Grant, and Kay, two senators; Tenth, Noble and Pawnee, one senator; Eleventh, Creek and Payne, one senator; Twelfth, Logan, one senator; Thirteenth, Lincoln and Pottawatomie, two senators; Fourteenth, Canadian and Oklahoma, two senators; Fifteenth, Caddo and Grady, two senators; Sixteenth, Blaine and Kingfisher, one senator; Seventeenth, Comanche, Jefferson, Stephens, two senators; Eighteenth, Carter, Love, and Murray, two senators; Nineteenth, Cleveland, Garvin, and McClain, two senators; Twentieth, Atoka, Bryan, and Coal, two senators; Twenty-first, Latimer and Le Flore, one senator; Twenty-second, Hughes and Okfuskee, one senator; Twenty-third, Pontotoc and Seminole, one senator; Twenty-fourth, Choctaw, McCurtain, and Pushmataha, one senator; Twenty-fifth, Pittsburg, one senator; Twenty-sixth, Marshall and Johnson, one senator; Twenty-seventh, Haskell, McIntosh, and Muskogee, two senators; Twenty-eighth, Adair and Sequoyah, one senator; Twenty-ninth, Mayes and Craig, one senator; Thirtieth, Ottawa, Delaware, and Cherokee, one senator; Thirty-first, Tulsa and Washington, one senator; Thirty-second, Okmulgee and Wagoner, one senator; Thirty-third, Nowata and Rogers, one senator.

(b) Title 14, Sections 9-72, incl., Oklahoma Statutes 1961. (Volume I, pp. 1042-1046, incl., Oklahoma Statutes 1961).

§ 9. Nominating districts—Nominations—Voting

The Second Senatorial District of the State of Oklahoma, as now constituted by law, shall be divided into two

nominating districts; Roger Mills, Ellis and Dewey Counties shall constitute one nominating district and shall nominate a candidate for the State Senate in the primary election of 1942, and each four years thereafter; Beckham County shall constitute a nominating district and shall nominate a candidate for the State Senate in said district at the primary election of 1944, and each four years thereafter; and the candidates so nominated in said districts shall be voted for at the general election following such nomination by all the qualified electors in said Second Senatorial District.

§ 10. Sixth district—Nominating districts

The Sixth Senatorial District of the State of Oklahoma, as now constituted by law, shall be divided into two (2) nominating districts: Washita and Kiowa Counties shall constitute one (1) nominating district and shall nominate a candiate for the State Senate at the primary election of 1942, and each four (4) years thereafter; Custer County shall constitutc a nominating district and shall nominate a canididate for the State Senate in said District at the primary election of 1944, and each four (4) years thereafter; and the candidates so nominated in said Districts shall be voted for at the general election following such nomination by all of the qualified electors in said Senatorial District.

§ 11. Ninth and thirty-first districts

From and after the passage of this Act, the Ninth Senatorial District of the State of Oklahoma shall be comprised of the Counties of Grant and Kay; the Thirty-first Senatorial District shall be comprised of the County of Tulsa.

§ 12. Thirty-fourth district

There is hereby created a Senatorial District to be numbered and known as the Thirty-fourth Senatorial District which shall be comprised of the territory embraced within the Counties of Osage and Washington.

§ 13. Number of senators

Hereafter each of said Senatorial Districts shall be represented by one Senator.

§ 14. Election of senators

At the election held in 1920, and each four years thereafter, there shall be elected one Senator from Senatorial District Number Thirty-four; provided, the Senator representing the Ninth Senatorial District, who is a resident of the territory embraced within the Thirty-fourth Senatorial District, shall represent the Thirty-fourth Senatorial District in the State Senate until a successor shall be elected, as hereinabove provided. Provided further, that at the election held in 1922, and every four years thereafter, there shall be elected one Senator each from Senatorial Districts Number Nine and Number Thirty-one.

§ 21. Thirteenth district—Nominating districts

The Thirteenth Senatorial District shall be divided into two nominating districts, Lincoln County constituting one nominating district, and Pottawatomie County shall constitute one nominating district; and the qualified electors of said nominating districts, as herein created, shall each nominate a candidate for State Senator in said district, as provided by law; and the candidates so nominated to be voted for at the general election, by all the qualified electors of said district.

§ 22. Fifteenth District—Nominating districts

The fifteenth Senatorial District shall be divided into two nominating districts; Grady County constituting one nominating district, and Caddo County shall constitute one nominating district, and the qualified electors of said nominating districts, as herein created, shall each nominate a candidate for State Senator in said district, as provided by law; and the candidates so nominated, to be voted for at the general election by all qualified electors of said district.

§ 31. Nominating districts

The Fourteenth Senatorial district shall be divided into two nominating districts, Canadian County constituting one nominating district, and Oklahoma County constituting another nominating district; and the qualified electors of said respective nominating districts as herein created shall each nominate a candidate for State Senator in said district as provided by law; and the candidate so nominated to be voted for at the general election by all the qualified electors of the said fourteenth Senatorial district.

§ 32. Nominations—Primary elections—District election—Additional senator

From each of said nominating districts candidates for State Senator of the State of Oklahoma, shall be nominated by political parties, or by petitioners of the respective districts, in the manner provided by law, and such candidates shall be voted for in the primary election to be held as provided by law in each of the nominating districts, and after being nominated as herein provided and as provided by law, the qualified voters and electors of the Senatorial district at large shall vote on all nominations so made; and no electors at such election shall vote for more than one candidate from each district at said election, unless there shall be added additional and further senators to said district other than those now provided for, and if a further or additional senator shall be provided so as to make three in said Senatorial district, then one of said senators shall be nominated from Canadian County, and the remaining senator or senators shall be nominated from Oklahoma County, and all of the senators thus nominated shall be elected as provided by law.

§ 33. Time for nominations and elections—Intention of act—Number and residence

Canadian County in the nominating district in this act created, shall nominate in said nominating district, one

State senator, to be elected in said district at the August primary as provided by law in the year 1918 and such senator so nominated at said primary shall be voted for at the November election in the year 1918, and each four years thereafter. The senator or senators provided by law in said district, other than the one provided for as to Canadian County, shall be nominated at the August primary 1920, and elected at the November election, 1920, and every four years thereafter.

It being the intention of the provisions of this act to give to Canadian County one nominating district for one State senator in said district, and Oklahoma County one nominating senatorial district for one State senator in said district, and Oklahoma County one nominating senatorial district for one or more senators as may be provided by law in said district, provided always, that said district shall be entitled by law to two senators or more, and it further being the intention of this act that one senator shall be a resident of Canadian County and one senator shall be a resident of Oklahoma County, the county from which the nomination shall be respectively made.

§ 41. Nominating districts—Nominations—Election

The Seventeenth Senatorial District of the State of Oklahoma shall be divided into two nominating districts; Stephens County and Jefferson County constituting one nominating district, and Cotton County and Comanche County shall constitute one nominating district; and the qualified electors of said nominating districts, as herein created, shall each nominate a candidate for State Senator in said district, as provided by law; and the candidates so nominated shall be voted for at the general election, by all the qualified electors of said district.

§ 42. Nominations—Primary and district elections

From each of said nominating districts, candidates for State Senator of the State of Oklahoma, shall be nominated

by political parties, or by petitioners of the representative districts, in the manner provided by law, and such candidates shall be voted for in the primary election to be held as provided by law in each of the nominating districts, and after being nominated as herein provided, and as provided by law, the qualified voters and electors of the Senatorial district at large shall vote on all nominations so made; and no electors at such election shall vote for more than one candidate from each district at said election.

§ 43. Time for nominations and elections

Stephens County and Jefferson County, in the nominating district in this Act created, shall nominate in said nominating district one State Senator, to be elected in said district at the August primary as provided by law in the year 1926, and such Senator so nominated at said primary shall be voted for at the November election in the year 1926, and each four (4) years thereafter. The Senator provided by law in said district comprised of Cotton County and Comanche County shall be nominated at the August primary, 1928, and elected at the November election, 1928, and every four (4) years thereafter.

§ 45.1 Eighteenth and twenty-six districts—Counties constituting

From and after the effective date of this Act, the Eighteenth (18th) Senatorial District of the State of Oklahoma shall be comprised of Carter County; the Twenty-Sixth (26th) Senatorial District shall be comprised of the Counties of Love and Marshall.

§ 45.2 Thirty-sixth district created—Counties constituting

There is hereby created a Senatorial District to be numbered and known as the Thirty-Sixth (36) Senatorial District of the State of Oklahoma, which shall be comprised of the territory embraced within the Counties of Murray and Johnston.

§ 45.3 Each district represented by one senator

Hereafter each of said Senatorial Districts shall be represented by one (1) Senator.

§ 45.4 Time of election of senators

At the general election to be held in 1942, and each four (4) years thereafter, there shall be elected one (1) Senator from Senatorial District No. 36; that at the general election to be held in 1944, and each four (4) years thereafter, there shall be elected one (1) Senator from Senatorial District No. 18, and one (1) Senator from Senatorial District No. 26.

§ 51. Nominating districts—Nominations—Election

The Nineteenth Senatorial District of the State of Oklahoma, as now constituted by law, shall be divided into two Nominating Districts; Cleveland and McClain Counties shall constitute one Nominating District and shall nominate a candidate for the State Senate in the primary election of 1934, and each four years thereafter; Garvin County shall constitute a Nominating District and shall nominate a candidate for the State Senate in said District at the primary election of 1936, and each four years thereafter; and the candidates so nominated in the said districts shall be voted for at the general election following said nomination by all of the qualified electors in said Nineteenth Senatorial District.

§ 52. Twentieth and twenty-fourth districts

From and after the passage of this Act, the Twentieth Senatorial District of the State of Oklahoma shall be comprised of the counties of Bryan and Choctaw; the Twenty-fourth Senatorial District shall be comprised of the Counties of Pushmataha and McCurtain.

§ 53. Thirty-fifth district

There is hereby created a Senatorial District to be numbered and known as the Thirty-fifth Senatorial District;

which shall be comprised of the territory embraced within the Counties of Coal and Atoka.

§ 54. Number of senators

Hereafter each of said Senatorial Districts shall be represented by one Senator.

§ 55. Election of senators

At the election held in 1938, and each four years thereafter, there shall be elected one Senator from Senatorial District Numbered Thirty-five; provided, the Senator representing the Twentieth Senatorial District, and whose office expires in 1938, shall represent the Thirty-fifth Senatorial District in the State Senate until a successor shall be elected as hereinabove set forth; provided, further, that the Senator now representing the Twentieth District, who was elected at the election in 1936, and the Senator now representing the Twenty-fourth District, who is a resident of the territory embraced within said District, shall continue to represent said Senatorial Districts Numbered Twenty and Twenty-four, respectively, until 1940; provided, further, that at the election held in 1940, and every four years thereafter, there shall be elected one Senator from Senatorial Districts Number Twenty and Twenty-four.

§ 61. Nominating districts—Nominations—Election

The twenty-seventh senatorial district of the State of Oklahoma shall be divided into two nominating districts; Muskogee County constituting one nominating district and Haskell and McIntosh Counties shall constitute one nominating district, and the qualified electors of said nominating districts, herein created, shall each nominate a candidate for state senator in said district, as provided by law, and the candidate, so nominated, shall be voted for at the general election by all the qualified electors of said district.

§ 62. Nominations—Primary elections—District election

From each of said nominating districts, candidates for state senator of the State of Oklahoma shall be nominated

by political parties or by petitioners of the representative district in the manner provided by law, and such candidates shall be voted for in the primary election to be held, as provided by law, in each nominating district, and after being nominated, as herein provided, and as provided by law, the qualified voters and electors and the senatorial district at large, shall vote on all nominations, so made, and no elector at such election shall vote for more than one candidate from each district at said election.

§ 63. Time for nominations and elections

Muskogee County, in the nominating district, in this Act created, shall nominate in said nominating district one state senator, to be nominated in said district at the August primary, as provided by law, in the year 1926, and such senator, so nominated, at the said primary, shall be voted for at the November election in the year 1926 and each four years thereafter. The senator, provided by law in said district, comprised of Haskell and McIntosh Counties shall be nominated at the August primary, 1928, and elected at the November election in 1928 and every four years thereafter.

§ 71. Twenty-eighth district—Counties comprising

From and after the passage of this Act the Twenty-eighth Senatorial District of the State of Oklahoma shall be comprised of Adair, Cherokee and Sequoyah Counties.

§ 72. Thirtieth district—Counties comprising

From and after the passage of this Act the Thirtieth Senatorial District of the State of Oklahoma shall be comprised of Ottawa and Delaware Counties.

APPENDIX X.

Title 14, Sections 97-100, incl., Oklahoma Statutes 1961 (Volume I, pp. 1047-1051, incl., Oklahoma Statutes 1961).

§ 97. Decennial legislative period—Biennial legislative period or sessions—Election of representatives

The ten-year period beginning the 16th day after the general election in November, 1962, and ending the 15th day after the general election in November, 1972, shall constitute a Decennial Legislative Period, unless otherwise provided by law. And the period is hereby divided into five legislative periods or sessions of two years each with the number of representatives assigned to each county for each of the legislative periods to be those shown in Section 3 of this Act.

Representatives assigned to each county for each of the five legislative periods shall be elected at the general election in the month of November next preceding the commencement of the respective legislative period.

Unless otherwise provided by law the representatives assigned to each county for each legislative period shall be nominated and elected at large by the electors of the respective counties.

§ 98. Legislative periods

Legislative periods provided for in Section 1 of this Act shall cover these periods:

(a) The first legislative period shall begin on the 16th day after the general election in November, 1962, and end with the 15th day after the general election in November, 1964.

(b) The second legislative period shall begin on the 16th day after the general election in November, 1964, and end with the 15th day after the general election in November, 1966.

(c) The third legislative period shall begin on the 16th day after the general election in November, 1966, and end with the 15th day after the general election in November, 1968.

(d) The fourth legislative period shall begin on the 16th day after the general election in November, 1968, and end with the 15th day after the general election in November, 1970.

(e) The fifth legislative period shall begin on the 16th day after the general election in November, 1970, and end with the 15th day after the general election in November, 1972.

§ 99. Representation of each county in each period

Until another apportionment of the House of Representatives shall be made in accordance with the terms of the Constitution and laws of Oklahoma, the House of Representatives shall be composed of the representation listed in the table below, and this representation shall be the legislative apportionment of the House of Representatives for each of the five periods, as established in Section 2 of this Act.

The legislative apportionment by legislative periods are hereby fixed as follows, subject, however, to such change as may be required by operation of Section 6 of this Act.

COUNTIES	FIRST PERIOD	SECOND PERIOD	THIRD PERIOD	FOURTH PERIOD	FIFTH PERIOD
Adair	1	1	1	1	1
Alfalfa	1	1	1	1	1
Atoka	1	1	1	1	1
Beaver	1	1	1	1	1
Beckham	1	1	1	1	1
Blaine	1	1	1	1	1
Bryan	2	2	2	2	2
Caddo	2	2	2	2	2

Canadian	2	2	2	2	2
Carter	2	2	2	2	2
Cherokee	1	1	1	1	1
Choctaw	1	1	1	1	1
Cimarron	1	1	1	1	1
Cleveland	3	3	3	3	3
Coal	1	1	1	1	1
Comanche	4	4	4	4	4
Cotton	1	1	1	1	1
Craig	1	1	1	1	1
Creek	2	2	2	2	2
Custer	1	1	1	1	1
Delaware	1	1	1	1	1
Dewey	1	1	1	1	1
Ellis	1	1	1	1	1
Garfield	3	3	3	3	3
Garvin	2	2	2	2	2
Grady	2	2	2	2	2
Grant	1	1	1	1	1
Greer	1	1	1	1	1
Harmon	1	1	1	1	1
Harper	1	1	1	1	1
Haskell	1	1	1	1	1
Hughes	1	1	1	1	1
Jackson	2	2	2	2	2
Jefferson	1	1	1	1	1
Johnston	1	1	1	1	1
Kay	3	3	3	3	3
Kingfisher	1	1	1	1	1
Kiowa	1	1	1	1	1
Latimer	1	1	1	1	1
Le Flore	2	2	2	2	2
Lincoln	1	1	1	1	1
Logan	1	1	1	1	1
Love	1	1	1	1	1
McClain	1	1	1	1	1

McCurtain	2	2	2	2	2
McIntosh	1	1	1	1	1
Major	1	1	1	1	1
Marshall	1	1	1	1	1
Mayes	1	1	1	1	1
Murray	1	1	1	1	1
Muskogee	3	3	3	3	3
Noble	1	1	1	1	1
Nowata	1	1	1	1	1
Okfuskee	1	1	1	1	1
Oklahoma	7	7	7	7	7
Okmulgee	2	2	2	2	2
Osage	2	2	2	2	2
Ottawa	2	2	2	2	2
Pawnee	1	1	1	1	1
Payne	2	2	2	2	2
Pittsburg	2	2	2	2	2
Pontotoc	2	2	2	2	2
Pottawatomie	2	2	2	2	2
Pushmataha	1	1	1	1	1
Roger Mills	1	1	1	1	1
Rogers	1	1	1	1	1
Seminole	2	2	2	2	2
Sequoyah	1	1	1	1	1
Stephens	2	2	2	2	2
Texas	1	1	1	1	1
Tillman	1	1	1	1	1
Tulsa	7	7	7	7	7
Wagoner	1	1	1	1	1
Washington	2	2	2	2	2
Washita	1	1	1	1	1
Woods	1	1	1	1	1
Woodward	1	1	1	1	1
Total	120	120	120	120	120

§ 100. Division of certain counties into legislative districts

(a) Oklahoma County shall be divided into seven (7) legislative districts as follows:

(1) Legislative District No. 1, Oklahoma County, shall contain the following described territory. Beginning at the intersection of May Avenue and Reno Street and extending along the center line of Reno Street to the center line of High Avenue; thence south to the center line of Southeast 15th Street, Oklahoma City; thence west to the center line of Western Avenue; thence south along the center line of Western Avenue to the center line of Southwest 29th Street, Oklahoma City; thence west to the center line of Pennsylvania Avenue; thence south to the center line of Grand Boulevard; thence west to the western boundary of Section 18, Township 11 North, Range 3 West; thence south of said boundary to the Cleveland County line; thence west to the intersection of the Oklahoma County County line; thence north along the western boundary of Oklahoma County to the northwest corner of Deer Creek Township; thence east along the northern boundary of Oklahoma County to the intersection thereof with the Edmond Township; thence south along the western boundary of Range 3 West to the corporate limits of Oklahoma City; thence south on the center line of May Avenue to the center line of Reno Street and point of beginning.

(2) Legislative District No. 2, Oklahoma County, shall contain the following described territory: Beginning at the intersection of High and Reno Streets in Oklahoma City and extending north on the center line of High Avenue, or western boundary line of Section 35, Township 12 North, Range 3 West, to the intersection of Northeast 10th Street; thence east on the center line of Northeast 10th Street and Alice Street to the corporate limits of Oklahoma City; thence east on the southern boundary line of Section 25, Township 12 North, Range 3 West, to the western boundary

of Crutcho Township; thence east to the county line; thence south to the county line; thence west to the intersection of county line with the western boundary of Section 31, Township 11 North, Range 3 West; thence north along said line to the corporate limits of Oklahoma City or Grand Boulevard; thence east on center line of Grand Boulevard to Pennsylvania Avenue, Oklahoma City; thence north along center line of Pennsylvania Avenue to the center line of Southwest 29th Street, thence east to the center line of Western Avenue; thence north to the center line of Southwest 15th Street; thence east to the center line of High Avenue or point of beginning.

(3) Legislative District No. 3, Oklahoma County, shall contain the following described territory: Beginning at the intersection of Pennsylvania Avenue and Northwest 36th Street, and extending east along the center line of Northwest 36th Street to the center line of Western Avenue; thence south along the center line of Western Avenue to the center line of Northwest 23rd Street; thence east along the center line of 23rd Street to the center line of Harvey Avenue; thence south along the center line of Harvey Avenue to the center line of Northwest 10th Street; thence west along the center line of Northwest 10th Street to the center line of Pennsylvania Avenue and thence north along said center line to Northwest 36th Street, or place of beginning.

(4) Legislative District No. 4, Oklahoma County, shall contain the following described territory: Beginning at the intersection of North Harvey Avenue and Northwest 23rd Street in Oklahoma City, and extending east along the center line of Northwest 23rd and Northeast 23rd Streets to Kelley Avenue; thence north along the center line on Kelley Avenue to its intersection with Northeast 50th Street; thence east along the center line of Northeast 50th Street to the western boundary of Crutcho Township;

thence south along the western boundary of Crutcho Township to the center of Northeast 10th Street; thence west along the center line of Northeast 10th Street and Northwest 10th Street to the center line of North Harvey Avenue; thence north along the center line of North Harvey Avenue to the point of beginning.

(5) Legislative District No. 5, Oklahoma County, shall contain the following described territory: Beginning at the intersection of May Avenue, and Northwest 10th Street, and extending east along the center line of Northwest 10th Street and Northeast 10th Street to the center line of Kelley Avenue; thence south along the center line of Kelley Avenue and High Street to the center line of Reno Avenue; thence west along the center line of Reno Avenue to the center line of May Avenue; thence north along the center line of May Avenue, to the center line of Northwest 10th Street or place of beginning.

(6) Legislative District No. 6, Oklahoma County, shall contain the following described territory: Beginning at the intersection of Northwest 23rd Street and Western Avenue; thence east along the center line of Northwest 23rd Street and Northeast 23rd Street to Kelley Avenue; thence north along the center line of Kelley Avenue to the intersection of Northeast 50th Street; thence east along the center line of Northeast 50th Street to the western boundary of Crutcho Township; thence south along the western boundary of Crutcho Township to its intersection with Northeast 10th Street; thence east along the center line of Northeast 10th Street extended to the Pottawatomie County line; thence north along the eastern boundary to Elk, Dewey and Luther Townships to the Logan County line; thence west along said line and the north line of Luther, Deepfork and Lincoln Townships to the Edmond Township line; thence south along the western boundary of Lincoln and Hartzell Townships to the Oklahoma Township line; thence west along

said Township line to the center of North Western Avenue; thence south along the center line of North Western Avenue to the intersection of same with Northwest 23rd Street or the point of beginning.

(7) Legislative District No. 7, Oklahoma County, shall contain the following described territory: Beginning at the intersection of May Avenue and Northwest 10th Street and extending east along the center line of Northwest 10th Street to the center line of Pennsylvania Avenue; thence north along the center line of Pennsylvania Avenue to the center line of Northwest 36th Street; thence east along the center line of Northwest 36th Street to the center line of Western Avenue; thence north along the center line of North Western Avenue to the corporate limits of Oklahoma City; thence north along the western boundary of Sections 9 and 4, Township 12 North, Range 3 West to the Britton Township line; thence east along the Britton Township line to the western boundary of Hartzell Township; thence north along the western boundary of Hartzell and Lincoln Township to the Logan County line; thence west six miles to the western boundary of Edmond Township; thence south along the western boundary of Edmond, Britton and Oklahoma Townships to the corporate limits of Oklahoma City; thence south to the center line of May Avenue, to the intersection of Northwest 10th Street or point of beginning.

(b) Garfield County shall be divided into three (3) legislative districts as follows:

(1) Legislative District No. 1 and Legislative District No. 2 shall consist of the City of Enid. Candidates in said districts shall be residents of such districts and shall be nominated in primary elections by the electors of these districts and elected in the general elections by the electors of these districts.

(2) Legislative District No. 3 shall consist of all of Garfield County not embraced in District No. 1 and District

No. 2. Candidates in this district shall be residents of this district and shall be nominated and elected by the electors of the district.

(c) Creek County shall be divided into two (2) legislative districts as follows:

(1) Legislative District No. 1 shall include the City of Sapulpa, the Town of Kiefer, and the following townships: Mannford, Hazlip, Sapulpa, Kellyville, and Mounds.

(2) Legislative District No. 2 shall include the cities of Drumright and Bristow and the following townships: Tiger, Olive, Shannon, Depew, Bristow, Sunnyslope, Lakeside, Newby, and Euchee.

Candidates in these districts shall be electors of such districts and shall be nominated in primary elections by the electors of these districts and elected in the general elections by the electors of the county at large.

(d) Le Flore County shall be divided into two (2) legislative districts as follows:

(1) Legislative District No. 1 shall include the following election precincts as now established or as may hereafter be changed or altered:

Cowlington Pct. No. 1, Tucker Pct. No. 2, Spiro Pct. No. 1, Spiro Pct. No. 2, Spiro Pct. No. 3, Braden Pct. No. 1, Skullevville Pct. No. 2, Pocola Pct. No. 1, Arkoma Pct. No. 2, Bokoshe Pct. No. 1, Bokoshe Pct. No. 2, Bokoshe Pct. No. 3, Milton Pct., Cameron Pct. No. 1, Williams Pct. No. 2, Rock Island Pct. No. 3, Tahoma Pct. No. 4, Shady Point Pct. No. 1, Panama Pct. No. 2, Hill Pct. No. 1, Gilmore Pct. No. 2, Monroe Pct., Tarby Pct. No. 2, Fairview Pct. No. 3, Calhoun Pct. No. 1, Walls Pct. No. 2, Wister Pct. No. 1, Fanshawe Pct. No. 2, Kennedy Pct. No. 3.

(2) Legislative District No. 2 shall include the following election precincts as now established or as may hereafter be changed or altered:

Poteau City Ward No. 1, Poteau City Ward No. 2, Poteau City Ward No. 3, Poteau City Ward No. 4, Howe Pct. No. 1, Howe Pct. No. 2, Glendale, Howe Pct. No. 3, Oakridge Pct. No. 4, Heavener City Ward No. 1, Heavener City Ward No. 2, Heavener City Ward No. 3, Heavener City Ward No. 4, Summerfield Pct. No. 1, Le Flore Pct. No. 2, Heavener Twp. Pct. No. 2, Reichert Pct. No. 3, Norman Pct. No. 4, Independence Pct. No. 5, Conser Pct. No. 1, Hodgen Pct. No. 2, Hontubby Pct. No. 3, Stapp Pct. No. 4, Page Pct. No. 1, Haw Creek Pct. No. 2, Muse Pct. No. 1, Big Cedar Pct. No. 2, Octavia Pct. No. 1, Cusher Pct. No. 2, Burkhart Pct. No. 3, Talihina Pct. No. 1, Forest Grove Pct. No. 2, Whitesboro Pct. No. 3, Forrester Pct. No. 6, Forrest Hill Pct. No. 7, Midway Pct. (Monroe Twp.).

(3) In order to file as a candidate in either district the candidate must have lived the six (6) months immediately preceding filing date in said district, and the candidates so filing shall be voted on in primary elections by the electors of their particular district, and shall be voted on in the general election by the electors of the county at large.

(c) Payne County shall be divided into two (2) legislative districts as follows:

(1) Legislative District No. 1 shall include the following townships as in existence at the time of the effective date of this Act: Rose, Pawnee, Cimarron, Mound, Eagle, Union, Indian, Clayton, Henry, and Glencoe.

(2) Legislative District No. 2 shall include all of Payne County not embraced in Legislative District No. 1, as created by this Act.

(3) Candidates in these districts shall be electors of such districts and shall be nominated in the primary elections by the electors of the respective district and elected in the general elections by the electors in the respective legislative district.

(f) Seminole County shall be divided into two (2) legislative districts as follows:

(1) Legislative District No. 1 shall be composed of the following townships: Red Mound, Brown, Miller, Lincoln, and Konawa.

(2) Legislative District No. 2 shall be composed of the following townships: Econtuchka and Wolf.

(3) Candidates in these districts shall be electors of such districts and shall be nominated in the primary elections by the electors of the respective district and elected in the general elections by the electors in the respective legislative district.

APPENDIX XI.

(a) Article V, Sections 1-4, incl., Constitution of Oklahoma (Volume I, pp. 62-63, Oklahoma Statutes 1961).

§ 1. Legislature—Authority and composition—Powers reserved to people

The Legislative authority of the State shall be vested in a Legislature, consisting of a Senate and a House of Representatives; but the people reserve to themselves the power to propose laws and amendments to the Constitution and to enact or reject the same at the polls independent of the Legislature, and also reserve power at their own

option to approve or reject at the polls any act of the Legislature.

§ 2. Designation and definition of reserved powers—Determination of percentages

The first power reserved by the people is the initiative, and eight per centum of the legal voters shall have the right to propose any legislative measure, and fifteen per centum of the legal voters shall have the right to propose amendments to the Constitution by petition, and every such petition shall include the full text of the measure so proposed. The second power is the referendum, and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health, or safety), either by petition signed by five per centum of the legal voters or by the Legislature as other bills are enacted. The ratio and per centum of legal voters hereinbefore stated shall be based upon the total number of votes cast at the last general election for the State office receiving the highest number of votes at such election.

§ 3. Petitions—Veto power—Elections—Time of taking effect—Style of bills—Duty of legislature

Referendum petitions shall be filed with the Secretary of State not more than ninety days after the final adjournment of the session of the Legislature which passed the bill on which the referendum is demanded. The veto power of the Governor shall not extend to measures voted on by the people. All elections on measures referred to the people of the State shall be had at the next election held throughout the State, except when the Legislature or the Governor shall order a special election for the express purpose of making such reference. Any measure referred to the people by the initiative shall take effect and be in force when it shall have been approved by a majority of the votes cast in such election. Any measure referred to the people by

the referendum shall take effect and be in force when it shall have been approved by a majority of the votes cast thereon and not otherwise.

The style of all bills shall be: "Be it Enacted By the People of the State of Oklahoma."

Petitions and orders for the initiative and for the referendum shall be filed with the Secretary of State and addressed to the Governor of the State, who shall submit the same to the people. The Legislature shall make suitable provisions for carrying into effect the provisions of this article.

§ 4. Referendum against part of act

The referendum may be demanded by the people against one or more items, sections, or parts of any act of the Legislature in the same manner in which such power may be exercised against a complete act. The filing of a referendum petition against one or more items, sections, or parts of an act shall not delay the remainder of such act from becoming operative.

(b) Article XXIV, Sections 1 and 3, Constitution of Oklahoma (Volume I, p. 137, Oklahoma Statutes 1961).

§ 1. Amendments proposed by Legislature—Submission to vote

Any amendment or amendments to this Constitution may be proposed in either branch of the Legislature, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered in their journals and referred by the Secretary of State to the people for their approval or rejection, at the next regular general election, except when the Legislature, by a two-thirds vote of each house, shall order a special election for that purpose. If a majority of all the electors voting at such election shall vote in favor

of any amendment thereto, it shall thereby become a part of this Constitution.

If two or more amendments are proposed they shall be submitted in such manner that electors may vote for or against them separately.

No proposal for the amendment or alteration of this Constitution which is submitted to the voters shall embrace more than one general subject and the voters shall vote separately for or against each proposal submitted; provided, however, that in the submission of proposals for the amendment of this Constitution by articles, which embrace one general subject. each proposed article shall be deemed a single proposal or proposition. As amended State Question No. 353, Referendum Petition No. 100, Adopted primary election July 1, 1952.

§ 3. Right of amendment by initiative petition not impaired

This article shall not impair the right of the people to amend this Constitution by a vote upon an initiative petition therefor.

APPENDIX XII

LEGISLATIVE APPORTIONMENT—HOUSE OF REPRESENTATIVES

CHAPTER 11 [2]

An Act relating to legislative apportionment of the House of Representatives under the provisions of section 10, article 5 of the Constitution of Oklahoma; prescribing a decennial legislative period beginning the sixteenth day after the general election in November, 1962, and ending the fifteenth

[2] 14 O.S. 1961 §§ 102-106.

day after the general election in November 1972; dividing the decennial period into five legislative periods of two years each; establishing representative districts and the boundaries thereof; designating the number of representatives for each legislative period during the decennial legislative period; repealing conflicting laws; and making provisions severable.

Be it enacted by the People of the State of Oklahoma:

Section 1. Decennial legislative period—Biennial legislative periods or sessions—Elections

The ten-year period beginning the 16th day after the general election in November, 1962, and ending the 15th day after the general election in November, 1972, shall constitute a Decennial Legislative Period, unless otherwise provided by law. And the Period is hereby divided into five Legislative Periods or sessions of two years each with the number of representatives assigned to each county or multi-counties for each of the Legislative Periods, except the first Period, to be those shown in Section 3 of this Act. Representatives for the first Period shall be those provided by law.

Representative post or posts assigned to each county or multi-counties for the respective Legislative Period shall be filed by nominees elected at the general election in the month of November next preceding the commencement of the respective Legislative Period.

And, unless otherwise provided by law, the representative or representatives assigned for each county or multi-counties for the respective Legislative Period shall be nominated and elected at large by the electors of the respective county or counties.

Section 2. Legislative periods

Legislative Periods provided for in Section 1 of this Act shall cover these periods:

(a) The first Legislative Period shall begin on the 16th day after the general election in November, 1962, and end with the 15th day after the general election in 1964.

(b) The second Legislative Period shall begin on the 16th day after the general election in November, 1964, and end with the 15th day after the general election in November, 1966.

(c) The third Legislative Period shall begin on the 16th day after the general election in November, 1966, and end with the 15th day after the general election in November, 1968.

(d) The fourth Legislative Period shall begin on the 16th day after the general election in November, 1968, and end with the 15th day after the general election in November, 1970.

(e) The fifth Legislative Period shall begin on the 16th day after the general election in November, 1970, and end with the 15th day after the general election in November, 1972.

Section 3. Representation of each county in each period

Until another apportionment of the House of Representatives shall be made in accordance with the provisions of the Constitution and laws of Oklahoma, the House of Representatives shall be composed of the representation listed in the table hereinafter set forth. It is the legislative interpretation of the provisions of the Oklahoma Constitution relating to apportionment of representatives that since a county having a population of at least one-half ratio is

entitled to one full time representative, then for each additional one-fifth of a full ratio, the county or combination of counties may have an additional representative for a legislative session during the decennial period. The name of each county and the names of attached counties, together with representation entitlements, are listed under columns designated for the second, third, fourth and fifth Legislative Periods. The apportionments:

COUNTIES	2ND LEG. PERIOD	3RD LEG. PERIOD	4TH LEG. PERIOD	5TH LEG. PERIOD
Alfalfa-Grant	2	1	1	1
Atoka-Pushmataha	2	1	1	1
Beaver-Harper	1	1	1	1
Cimarron-Texas	2	1	1	1
Coal-Hughes	2	1	1	1
Cotton-Jefferson	1	1	1	1
Craig-Nowata	2	2	1	1
Dewey-Ellis-Roger Mills	2	1	1	1
Greer-Harmon	1	1	1	1
Haskell-Latimer	2	1	1	1
Johnston-Murray	2	1	1	1
Kingfisher-Major	2	1	1	1
Love-Marshall	1	1	1	1
Noble-Pawnee	2	2	1	1
Adair	1	1	1	1
Beckham	2	1	1	1
Bryan	1	2	2	1
Blaine	1	1	1	1
Caddo	2	2	1	1
Canadian	1	2	2	1
Carter	2	2	2	1
Cherokee	1	1	1	1
Choctaw	1	1	1	1
Cleveland	3	2	2	2

Comanche	4	4	4	4
Creek	2	2	2	1
Custer	1	2	2	1
Delaware	1	1	1	1
Garfield	2	3	3	2
Garvin	2	2	1	1
Grady	2	2	1	1
Jackson	2	2	1	1
Kay	2	3	3	2
Kiowa	1	1	1	1
LeFlore	2	2	1	1
Lincoln	1	1	1	2
Logan	1	1	1	2
McClain	1	1	1	1
McCurtain	2	2	1	1
McIntosh	1	1	1	1
Mayes	1	1	1	2
Muskogee	3	3	3	2
Okfuskee	1	1	1	1
Oklahoma	7	7	7	7
Okmulgee	2	2	2	1
Osage	2	2	2	1
Ottawa	2	2	1	1
Payne	2	2	2	2
Pittsburg	2	2	2	1
Pontotoc	2	2	1	1
Pottawatomie	2	2	2	2
Rogers	1	1	1	2
Seminole	2	2	1	1
Sequoyah	1	1	1	2
Stephens	2	2	2	1
Tillman	1	1	1	1
Tulsa	7	7	7	7
Wagoner	1	1	1	1
Washington	2	2	2	2

Washita	1	1	1	2
Woods	1	1	1	1
Woodward	1	1	1	1
TOTALS	112	107	96	91

Provided however that when a legislative district contains two counties and said legislative district shall be entitled to two representatives, then each said county shall be a nominating district.

Section 4. Creek County—Division into two legislative districts

Creek County shall be divided into two (2) legislative districts as follows:

(1) Legislative District No. 1 shall include the City of Sapulpa, the Town of Kiefer, and the following townships. Mannford, Hazlip, Sapulpa, Kellyville and Mounds.

(2) Legislative District No. 2 shall include the cities of Drumright and Bristow and the following townships: Tiger, Olive, Shannon, Depew, Bristow, Sunnyslope, Lakeside, Newby and Euchee.

Section 5. Legislative districts

Any county eligible for and receiving an apportionment of two or more representatives for any of the Legislative Periods in the Decennial Legislative Period may have districts as provided by law. Counties without legislative districts shall nominate and elect Representatives from the county-at-large.

Section 6. Repealer

Title 14, O.S. 1961, Sections 97 through 99, 100(b), (c), (d), (e) and (f), and 101, and all parts of acts in conflict herewith are hereby repealed.

Section 7. Severability

The provisions of this Act are severable, and if any part or provision hereof shall be held void, the decision of the Court so holding shall not affect or impair any of the remaining parts or provisions of this Act.

Approved March 7, 1963.

APPENDIX XIII

RESOLUTIONS

LEGISLATIVE APPORTIONMENT—SENATE

S.J. Res. No. 8 [9]

A Joint Resolution relating to apportionment of the members of the Oklahoma State Senate; designating districts; and repealing conflicting laws.

WHEREAS, the people of Oklahoma by adoption of the Constitution of Oklahoma have provided for a method of determining membership in the State Legislature; and

WHEREAS, the Constitution of the State of Oklahoma specifies that the State shall be divided into districts for the election of State Senators and further states that such districts shall be based upon population as "ascertained by the next preceding Federal Census, or in such manner as the Legislature may direct"; and

WHEREAS, the quoted provision of the Constitution of the State of Oklahoma specifically authorizes a determination of districts in such manner as the Legislature may direct; and

WHEREAS, by other standards and guides written into the Constitution of the State of Oklahoma, it is apparent

[9] 14 O.S. 1961, §§ 78.1-78.11.

that the Legislature is authorized to consider other factors in addition to the number of persons within a district; and

WHEREAS, a census is not a true representation of the permanent population of an area because of the inclusion within such census of migratory, transient, and temporary residents; and

WHEREAS, the number of registered voters and the number of people actually voting in the last election, among other factors, should be taken into consideration in determining permanent population; and

WHEREAS, the Legislature should truly reflect a representation of the permanent citizens of an area in order to provide proper legislation for those affected; and

WHEREAS, twenty-two of the present State Senators were elected at the general election of 1962 for a term of four years, and the interests of the State of Oklahoma and its people will be best served by permitting each of such incumbent Senators to serve out the entire term for which he was elected.

Now, Therefore, be it resolved by the Senate and the House of Representatives of the Twenty-Ninth Legislature of the State of Oklahoma:

Section 1. Representation as based on permanent population

Under the authority of the Oklahoma Constitution, it is hereby declared that representation in the Oklahoma State Senate shall be based on the permanent population of the counties.

Section 2. Division of state into districts

The State of Oklahoma is hereby divided into forty-seven senatorial districts to be numbered and to include

the territory within the counties hereafter indicated, and one St te Senator shall be elected from each such district:

District Number	*Counties in Districts*
1	Cimarron, Texas, Beaver, Harper
2	Beckham, Harmon, Greer
3	Jackson, Tillman
4	Kiowa, Washita
5	Custer, Dewey, Roger Mills
6	Woods, Ellis, Woodward
7	Major, Grant, Alfalfa
8	Blaine, Canadian
9	Caddo
10	Comanche
11	Stephens
12	Grady
13	Kingfisher, Logan
14	Garfield
15	Kay
16	Payne
17	Oklahoma
18	Oklahoma
19	Oklahoma
20	Oklahoma
21	Cleveland
22	Garvin, McClain
23	Carter
24	Cotton, Jefferson, Love, Marshall
25	Murray, Johnston, Coal, Atoka
26	Pontotoc
27	Pottawatomie
28	Seminole, Hughes
29	Lincoln, Okfuskee
30	Creek
31	Osage, Noble, Pawnee
32	Washington

33	Tulsa
34	Tulsa
35	Tulsa
36	Okmulgee
37	Pittsburg
38	Bryan, Choctaw
39	Pushmataha, McCurtain
40	LeFlore
41	Haskell, Latimer, McIntosh
42	Muskogee
43	Sequoyah, Adair
44	Wagoner, Cherokee
45	Rogers, Nowata
46	Craig, Mayes
47	Ottawa, Delaware

Section 3. Districts 17, 18, 19 and 20—Area

Districts Nos. 17, 18, 19, and 20 shall be wholly within Oklahoma County, and shall respectively comprise the following described area:

Oklahoma County shall be divided into four senatorial districts as follows:

(a) District No. 17 shall comprise the following described area: Beginning at the intersection of North 10th Street and the center line of the Santa Fe Railroad in Oklahoma City, thence northerly along the center line of the Santa Fe Railroad to the northern Oklahoma County boundary, thence west to the western Oklahoma County boundary, thence south to the center line of North 10th Street, thence east to the center line of the Santa Fe Railroad, which is the point of beginning.

(b) District No. 18 shall comprise the following described area: Beginning at the intersection of North 10th Street and the center line of the Santa Fe Railroad in Oklahoma City, thence northerly along the center line of

the Santa Fe Railroad to the northern Oklahoma County boundary, thence east to the eastern Oklahoma County boundary, thence south to the center line of North 10th Street, thence west to the center line of the Santa Fe Railroad, which is the point of beginning.

(c) District No. 19 shall comprise the following described area: Beginning at the intersection of North 10th Street and the center line of the Santa Fe Railroad in Oklahoma City, thence southerly along the center line of the Santa Fe Railroad to the southern Oklahoma County boundary, thence west to the western Oklahoma County boundary, thence north to the center line of North 10th Street, thence east to the center line of the Santa Fe Railroad, which is the point of beginning.

(d) District No. 20 shall comprise the following described area: Beginning at the intersection of North 10th Street and the center line of the Santa Fe Railroad in Oklahoma City, thence southerly along the center line of the Santa Fe Railroad to the southern Oklahoma County boundary, thence east to the eastern Oklahoma County boundary, thence north to the center line of North 10th Street, thence west to the center line of the Santa Fe Railroad, which is the point of beginning.

Section 4. Districts 33, 34 and 35—Area

Districts Nos. 33, 34, and 35 shall be wholly within Tulsa County, and shall respectively comprise the following described area:

(a) District No. 33 shall comprise all that portion of Tulsa County lying north of a line described as: Beginning at a point where Fairview Street intersects the boundary line between Tulsa County and Osage County, thence east along the center line of Fairview Street to Main Street; thence south along the center line of Main Street to the

Frisco Railroad; thence northeasterly along the center line of the Frisco Railroad to Lewis Avenue; thence south along the center line of Lewis Avenue to 5th Street; thence east along the center line of 5th Street to Harvard Avenue; thence north along the center line of Harvard Avenue to 4th Place; thence east along the center line of 4th Place to Memorial Drive; thence north along the center line of Memorial Drive to Admiral Place; thence east on Admiral Place to 145th Street East; thence north along the center line of 145th Street East to a point where 145th Street East intersects the boundary line between Tulsa County and Rogers County, at the extreme southwest corner of Rogers County.

(b) District No. 34 shall comprise all of that portion of Tulsa County lying south and west of a line described as: Beginning at a point where Fairview Street intersects the boundary line between Tulsa County and Osage County, thence east along the center line of Fairview Street to Main Street; thence south along the center line of Main Street to the Frisco Railroad; thence northeasterly along the center line of the Frisco Railroad to Lewis Avenue; thence south along the center line of Lewis Avenue to 13th Street; thence west along the center line of 13th Street to Peoria Avenue; thence south along the center line of Peoria Avenue to 61st Street, thence west along the center line of 61st Street to the east bank of the Arkansas River, thence southward following the east bank of the Arkansas River to a point opposite and directly north of Mingo Road; thence south across the Arkansas River, and following the center line of Mingo Road to the intersection of Mingo Road and the boundary line between Tulsa County and Okmulgee County.

(c) District No. 35 shall comprise all of that portion of Tulsa County lying south and east of a line described as: Beginning at a point where 145th Street East intersects the boundary line between Tulsa County and Rogers County

at the extreme southwest corner of Rogers County, thence south along the center line of 145th Street East to Admiral Place; thence west along the center line of Admiral Place to Memorial Drive; thence south along the center line of Memorial Drive to 4th Place; thence west along the center line of 4th Place to Harvard Avenue; thence south along the center line of Harvard Avenue to 5th Street; thence west along the center line of 5th Street to Lewis Avenue; thence south along the center line of Lewis Avenue to 13th Street; thence west along the center line of 13th Street to Peoria Avenue; thence south along the center line of Peoria Avenue to 61st Street; thence west along the center line of 61st Street to the east bank of the Arkansas River; thence southward, following the east bank of the Arkansas River to a point opposite and directly north of Mingo Road; thence south across the Arkansas River and following the center line of Mingo Road to the intersection of Mingo Road and the boundary line between Tulsa County and Okmulgee County.

Section 5: Four year tenure

The term of office of all State Senators shall be four years, except as herein provided.

Section 6. Senators elected in 1964—Tenure

One State Senator shall be elected from each of the following numbered districts at the regular State general election held during the year Nineteen Hundred Sixty-four; and the Senator so elected from each such district shall hold office for a term of four years commencing the fifteenth day succeeding such general election:

DISTRICTS NOS. 2, 5, 9, 10, 13, 14, 17, 19, 22, 23, 24, 26, 27, 28, 31, 32, 34, 36, 38, 39, 41, 43, 44, 47.

Section 7. Senators elected in 1966—Tenure

One State Senator shall be elected from each of the following numbered districts at the regular State general

election held during the year Nineteen Hundred Sixty-six; and the Senator so elected from each such district shall hold office for a term of four years commencing the fifteenth day succeeding such general election:

DISTRICTS NOS. 1, 3, 4, 6, 7, 8, 11, 12, 15, 16, 18, 20, 21, 25, 29, 30, 33, 35, 37, 40, 42, 45, 46.

Section 8. Senators elected from Districts 18, 20, 30, and 33 in 1964—Tenure

Notwithstanding any provision herein to the contrary, State Senators shall be elected from Districts Nos. 18, 20, 30, and 33 at the regular State general election held during the year Nineteen Hundred Sixty-four, and the Senator so elected from each such district shall hold office for a term of two years commencing the fifteenth day succeeding such general election.

Section 9. Certain senators elected in 1962—Tenure

Notwithstanding any provision herein to the contrary, each State Senator heretofore elected for a four-year term at the general election held during the year Nineteen Hundred Sixty-two from a previously-existing senatorial district comprising in whole or in part territory by this Act included within District No. 5 or District No. 28, as herein described, shall serve for the remainder of the four-year term for which he was elected, or until fifteen days succeeding the regular general election held during the year Nineteen Hundred Sixty-six, unless he shall sooner vacate such office.

Section 10. Twenty-two senators elected in 1962—Tenure

Twenty-two of the present State Senators who were elected at the general election of 1962 for terms of four years shall continue to serve for the term of office for which they were elected.

Section 11. Legislative intent

It is hereby declared to be the intention of the legislature that neither this Act, nor any section, clause, provision, part, or sentence thereof shall be severable from or exist separately from this Act or any other section, clause, provision, part, or sentence thereof; and that if any such section, clause, provision, part, or sentence of this Act shall hereafter be adjudged by final judgment of any court of competent jurisdiction to be unconstitutional, or otherwise invalid or ineffective for any reason whatever, then and in that event this entire Act and each and every section and provision thereof shall thereby be invalidated, and this Act shall thereupon be null and void in its entirety for all purposes.

Section 12. Repealer

14 O.S. 1961, §§ 9 through 14, 21, 22, 31, 32, 33, 41, 42, 43, 45.1, 45.2, 45.3, 45.4, 51, 52, 53, 54, 55, 61, 62, 63, 71, and 72 are hereby repealed.

Approved March 7, 1963.

APPENDIX XIV

LEGISLATURE—APPORTIONMENT
S.J. Res. No. 4

A Joint Resolution directing the Secretary of State to refer to the people an amendment to Article V of the Oklahoma Constitution relating to apportionment of the State Legislature; providing formulae for determination of membership of Legislature; establishing four-year terms for Senators and two-year terms for Representatives; directing Legislature to apportion the Legislature; creating an Apportionment Commission;

designating members thereof; directing Commission to apportion Legislature when Legislature fails to act; providing for review of legislative or commission apportionment by the Oklahoma Supreme Court; authorizing Supreme Court to require Commission to reapportion under the provisions of the Oklahoma Constitution; requiring court to issue decision within certain time; repealing conflicting sections of Oklahoma Constitution; providing for ballot title; and ordering a special election.

WHEREAS, the history of the United States under a republican form of government, as established by the Constitution, recognizes the value of representative government based on governmental units with like political, social, and economic interests; and

WHEREAS, to properly balance conflicting views and opposite purposes, it is desirable that the legislature of a democratic government provide for adequate and fair representation of those groups which have similar political, social, and economic interests; and

WHEREAS, the establishment of county units of government by the Constitution of Oklahoma was based upon a consideration of the political, social, and economic similarity of interests of the people included within such governmental units; and

WHEREAS, the growth and progress of Oklahoma has encouraged and identified such units of government as representative of groups of people with like and similar political, social, and economic interests; and

WHEREAS, the fair and equitable representation to be provided in the Oklahoma Legislature should include not only population but other major factors such as the federal analogy, history, economics, custom, territory, and similar

and related factors, in order that invidious discrimination will not divest segments of the population of their representation.

Now, Therefore, be it resolved by the Senate and the House of Representatives of the Twenty-Ninth Legislature of the State of Oklahoma:

Section 1. The Secretary of State shall refer to the people, for their approval or rejection, as and in the manner provided by law, the following proposed amendment to Article V of the Oklahoma Constitution:

Section 1. Article V of the Constitution of Oklahoma is hereby amended by adding thereto the following new sections:

Section 9A. The state shall be apportioned into forty-eight senatorial districts in the following manner: the nineteen most populous counties, as determined by the most recent Federal Decennial Census, shall constitute nineteen senatorial districts with one senator to be nominated and elected from each district; the fifty-eight less populous counties shall be joined into twenty-nine two-county districts with one senator to be nominated and elected from each of the two-county districts. In apportioning the State Senate, consideration shall be given to population, compactness, area, political units, historical precedents, economic and political interests, contiguous territory, and other major factors, to the extent feasible.

Each senatorial district, whether single county or multi-county, shall be entitled to one senator, who shall hold office for four years; provided that any senator, serving at the time of the adoption of this amendment, shall serve the full time for which he was elected. Vitalization of senatorial districts shall provide for one-half of the senators to be elected at each general election.

Section 10A. The House of Representatives shall consist of the number of Representatives as determined by the formula and procedure set forth herein. The number of members of the House of Representatives to which each county shall be entitled shall be determined according to the following formula:

a. The total population of the state as ascertained by the most recent Federal Decennial Census shall be divided by the number one hundred and the quotient shall be the ratio of representation in the House of Representatives, except as otherwise provided in this Article.

b. Every county having a population less than one full ratio shall be assigned one Representative; every county containing an entire ratio but less than two ratios shall be assigned two Representatives; every county containing a population of two entire ratios but less than three ratios shall be assigned three Representatives; and every county containing a population of three entire ratios but less than four ratios shall be assigned four Representatives.

After the first four Representatives, a county shall qualify for additional representation on the basis of two whole ratios of population for each additional Representative.

Each Representative nominated and elected shall hold office for two years.

Section 11A. The first apportionment of the legislature shall be accomplished by the legislature under the formulae contained in Sections 9A and 10A, within sixty days after the first regular session of the legislature following the adoption of this amendment, and thereafter the apportionment shall be within sixty days after the convening of the first regular session of the legislature following each Federal Decennial Census. If the legislature shall fail or refuse to make such apportionment within sixty days after the

convening of the legislature after the adoption of this amendment, or if it should thereafter fail within the time provided herein to make such reapportionment, then such apportionment or reapportionment, as the case may be, shall be accomplished by an Apportionment Commission composed of the Attorney General, Secretary of State, and the State Treasurer of the State of Oklahoma according to the provisions of Sections 9A and 10A of this Article.

Section 11B. Each order of apportionment rendered by the Apportionment Commission shall be in writing and shall be filed with the Secretary of State and shall be signed by at least two members of the Commission.

Section 11C. Any qualified elector may seek a review of any apportionment order of the Commission, or apportionment law of the legislature, within sixty days from the filing thereof, by filing in the Supreme Court of Oklahoma a petition which must set forth a proposed apportionment more nearly in accordance with this Article. Any apportionment of either the Senate or the House of Representatives, as ordered by the Commission, or apportionment law of the legislature, from which review is not sought within such time, shall become final. The court shall give all cases involving apportionment precedence over all other cases and proceedings; and if said court be not in session, it shall convene promptly for the disposal of the same.

Section 11D. Upon review, the Supreme Court shall determine whether or not the apportionment order of the Commission or act of the legislature is in compliance with the formula as set forth in this Article and, if so, it shall require the same to be filed or refiled as the case may be with the Secretary of State forthwith, and such apportionment shall become final on the date of said writ. In the event the Supreme Court shall determine that the apportionment order of said Commission or legislative act is not

in compliance with the formula for either the Senate or the House of Representatives as set forth in this Article, it will remand the matter to the Commission with directions to modify its order to achieve conformity with the provisions of this Article.

Section 11E. The Supreme Court, upon petition of any qualified elector alleging failure of the Commission to timely act, is hereby vested with original jurisdiction to compel, and shall compel, the Commission to make the apportionment as herein provided. It shall also have exclusive jurisdiction of any review hereunder. If more than one petition be filed, the court shall consolidate such proceedings for hearing and disposition, and shall file its opinion and issue its writ within sixty days from the timely filing of such last petition. In the event any action filed hereunder shall be abandoned or dismissed, any other qualified elector shall be allowed to intervene within ten days thereof.

Section 2. §§ 9, 9(a), 9(b), 10, 11, 12, 13, 14, 15, and 16 of Article V of the Oklahoma Constitution are hereby repealed

Section 2. Ballot title

The ballot title for the proposed constitutional amendment as set forth in SECTION 1 of this resolution shall be in the following form:

BALLOT TITLE

Legislative Referendum No. ..... State Question No. .....

THE GIST OF THE PROPOSITION IS AS FOLLOWS:

Shall a Constitutional Amendment amending Article V of the Oklahoma Constitution relating to apportionment of the state legislature; providing for not less than forty-eight Senators; establishing four-year terms for Senators and two-year terms for Representatives; providing apportionment to be by prescribed formulae; designating legislature to make

apportionment within certain time; creating an Apportionment Commission; designating members thereof; directing Commission to apportion legislature when legislature fails to act; providing for review of legislative or Commission apportionment by the Supreme Court; authorizing Court to require Commission to reapportion under the provisions of the Constitution; requiring Court to issue decision within certain time; repealing conflicting sections of the Constitution

be approved by the people?

SHALL THE PROPOSED AMENDMENT BE APPROVED? ☐ YES ☐ NO

Section 3. Filing copies

The President Pro Tempore of the Senate shall, immediately after the adoption of this resolution, prepare and file one copy thereof, including the above ballot title, with the Secretary of State and one copy with the Attorney General of the State of Oklahoma.

Section 4. Special election

A special election is hereby ordered to be held throughout the State of Oklahoma on the date of the next runoff primary election at which time the proposed amendment to the Constitution of the State of Oklahoma, set forth in SECTION 1 of this resolution, shall be submitted to the people of Oklahoma for their approval or rejection as and in the manner provided by law.

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JOHN F. DAVIS, CLERK

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 546

DON BALDWIN, J. H. BELVIN, ED BERRONG, ROY C. BOECHER, WILFORD E. BOHANNON, CHARLES E. COLSTON, RAY FINE, GLEN HAM, LEROY MCCLENDON, LOUIS H. RITZHAUPT, ALFRED STEVENSON, TOM TIPPS, BASIL R. WILSON, WALT ALLEN, BOYD COWDEN, BYRON DACUS, CLEM HAMILTON, BOB A. TRENT, JOE BAILEY COBB, LEON B. FIELD, S. S. MCCOLGIN, ALLEN G. NICHOLS, and GENE STIPE,
Appellants,

VERSUS

HARRY R. MOSS,
Appellee.

APPEAL FROM A THREE-JUDGE COURT OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

JURISDICTIONAL STATEMENT OF INTERVENING, DEFENDANT STATE SENATORS

JIM A. RINEHART, of
RINEHART, RINEHART & RINEHART,
El Reno, Oklahoma,

Attorney for Intervening State Senators.

October, 1963.

UNIVERSAL TYPEWRITER CO., 13 SO. WALKER, OKLAHOMA CITY, PH. CE 2-8750

SUBJECT INDEX

	PAGE
Statement	1
Opinions Below	4
Grounds for Appellate Jurisdiction	4
(a) Nature of Proceeding	4
(b) Dates of Judgment and Appeal	9
(c) Statute Conferring Jurisdiction Upon the Supreme Court	9
(d) Cases Believed to Sustain Jurisdiction of the Supreme Court in This Appeal	9
(e) State Statutes Involved	9
Questions Presented by the Appeal	10
Statement of Case	12
Reasons for Plenary Consideration	14
Conclusion	16

AUTHORITIES CITED

CASES:

Baker v. Carr, 369 U.S. 186, 82 S.Ct. 691	9, 12, 15
Baldwin, et al. v. Moss, et al., ___ F.2d ___	4
Baldwin v. Moss, ___ U.S. ___, 83 S.Ct. 1686	4, 8
Florida Lime & Avacado Growers, Inc. v. Jacobsen, 362 U.S. 73	9
Gray v. Sanders, 370 U.S. 921	9
Harrison v. N.A.A.C.P., 360 U.S. 167, 79 S.Ct. 1025, 3 L. Ed.2d 1152	9

INDEX CONTINUED PAGE

Kesler v. Dept. of Public Safety, 369 U.S. 153 9

Moss v. Burkhart, D.C. W.D. Okla. (1962), 207 F. Supp. 885 ..... 4, 5, 6

Palmetto Fire Ins. Co. v. Conn, 272 U.S. 295 9

Price v. Moss, ... U.S. ..., 83 S.Ct. 1686 4

Price v. Moss, et al., 320 F.2d 917 4

CONSTITUTIONAL PROVISIONS:

United States Constitution:

Equal Protection Clause of Amendment XIV 4-5, 11-12

Oklahoma Constitution:

Art. V, Secs. 1-4 10

Art. V, Secs. 1, 2 ..... 10, 12

Art. V, Sec. 9 ..... 2, 3, 7, 10, 13, 15

Art. V, Sec. 9(a) 6, 10

Art. V, Secs. 9, 9(a), 9(b), 10 10

Art. V, Sec. 10 6

Art. V, Sec. 11 10

Art. V, Sec. 30 ..... 2, 3, 10, 11, 15

STATUTES:

14 O.S. 1961, Secs. 9-14, 22, 31-33, incl., 41-43, incl., 45.1-45.4, incl., 51-55, incl., 61-63, incl., 71, 72, 97-100, incl. 10

Enrolled Senate Joint Resolution No. 4 8

House Bill No. 586, 29th (1963) Oklahoma Legislature 10, 11, 13, 14

Senate Joint Resolution No. 4, 29th (1963) Oklahoma Legislature 10, 12, 13, 14

Senate Joint Resolution No. 8, 29th (1963) Oklahoma Legislature 10, 11, 13

INDEX CONTINUED PAGE

APPENDIX

Appendix I:

Memorandum of Decision and Final Judgment i

Appendix II:

Art. V, Secs. 1-4, incl., Constitution of Oklahoma (Vol. I, pp. 62-63, Oklahoma Statutes 1961) xxv
Art. V, Secs. 9, 9a, 9b, and 10, Constitution of Oklahoma (Vol. I, pp. 64-65, Oklahoma Statutes 1961) xxix
Art. V, Sec. 11, Constitution of Oklahoma (Vol. I, pp. 65-66, Oklahoma Statutes 1961) xxxiii
Art. V, Sec. 30, Oklahoma Constitution xxviii
Art. XXIV, Secs. 1-3, Constitution of Oklahoma (Vol. I, p. 137, Oklahoma Statutes 1961) xxvii

Title 14, Secs. 9-72, incl., Oklahoma Statutes 1961 (Vol. I, pp. 1042-1046, incl., Oklahoma Statutes 1961 xxxiv
Title 14, Secs. 97-100, incl., Oklahoma Statutes 1961 (Vol. I, pp. 1047-1051, incl., Oklahoma Statutes 1961 xlii

Appendix III:

Legislative Apportionment—House of Representatives—Chapter 11, H.B. 586, 29th (1963) Oklahoma Legislature lii

Appendix IV:

Legislative Apportionment—Senate Joint Resolution No. 8 (now in effect but not officially reported) lix

Appendix V:

Legislative Apportionment—Senate Joint Resolution No. 4, 29th (1963) Oklahoma Legislature (to be voted on in July, 1964) lix

In the
Supreme Court of the United States
OCTOBER TERM, 1963

No. .....

DON BALDWIN, J. H. BELVIN, ED BERRONG, ROY C. BOECHER, WILFORD E. BOHANNON, CHARLES E. COLSTON, RAY FINE, GLEN HAM, LEROY MCCLENDON, LOUIS H. RITZHAUPT, ALFRED STEVENSON, TOM TIPPS, BASIL R. WILSON, WALT ALLEN, BOYD COWDEN, BYRON DACUS, CLEM HAMILTON, BOB A. TREST, JOE BAILEY COBB, LEON B. FIELD, S. S. MCCOLGIN, ALLEN G. NICHOLS, and GENE STIPE,
Appellants,

VERSUS

HARRY R. MOSS,
Appellee.

APPEAL FROM A THREE-JUDGE COURT OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

JURISDICTIONAL STATEMENT OF INTERVENING DEFENDANT STATE SENATORS

STATEMENT

These intervening defendants who are state senators of the State of Oklahoma file this jurisdictional statement under Rules 13 and 15 of this Court. Appellants desire to use for this appeal the single record without duplication

which has been requested and filed by the Attorney General of the State of Oklahoma in an appeal from the same judgment, reference to which record is hereby made pursuant to Rule 12. The appeal is from the final judgment of a three-judge court convened in the United States District Court for the Western District of Oklahoma filed and entered on the 17th day of July, 1963.

The judgment appealed from granted a permanent injunction against the State Election Board of the State of Oklahoma and actually made a reapportionment of both the house and senate of the Oklahoma Legislature, according to a court-approved formula referred to as Model C. In addition thereto it held that a number of the intervenors (state senators) who had been elected to the Oklahoma State Senate for a term of 4 years (Article 5, Sec. 9, Oklahoma Constitution), would have their terms of office shortened to a period of 2 years, notwithstanding the constitutional provision that the State Senate shall be the judge of the elections, returns and qualifications of its own members (Art. 5, Sec. 30, Oklahoma Constitution). The final judgment incorporates principles declared and announced in previous interlocutory decrees.

The permanent injunction part of the final judgment invalidates:

(a) Certain portions of the Oklahoma Constitution relating to legislative apportionment.

(b) All reapportionment statutes enacted by the Oklahoma Legislature in 1961 and prior years.

(c) The reapportionment acts of the 29th Oklahoma Legislature (1963), when they became effective September 12, 1963.

(d) The election of a number of state senator intervenors at the general election in November 1962 for a term of 4 years, by ending such term on the 15th day after the general election in 1964, and the provisions of Oklahoma Constitution, Article 5, Secs. 9 and 30,

wherever the Constitution and laws of Oklahoma differ from the apportionment formula set forth in the final judgment.

Intervenor appellant state senators elected for the terms aforesaid, with the permission of the three-judge court, will be deprived of one-half of the term of office to which elected in 1962 under the terms of the injunction which affirmatively declares, adjudges and directs that:

> "The terms of office of Senators elected in the November 1960 general election, as well as those elected at the November 1962 election, will end with the 15th day after the general election of November 1964."

and ordered and directed the State Election Board:

> "* * * to accept filings and conduct elections, in accordance with the provisions of this Order and the applicable provisions of Title 26, Oklahoma Statutes, as amended, * * *"

and enjoined the State Election Board from accepting filings or conducting elections in any manner inconsistent with said final judgment.

OPINIONS BELOW

(a) Final Judgment of July 17, 1963 here sought to be reviewed:

Appendix I—Memorandum of Decision and Final Judgment, with Appendix A, July 17, 1963. Memorandum of Decision granting restraining Order.

(b) Earlier reported opinions in the same case:

Moss v. *Burkhart*, D.C. W.D. Okla. (1962), 207 F. Supp. 885.

1. Memorandum of Facts and Conclusions of Law and Interlocutory Decree on Motion for Interlocutory Relief. April 30, 1962, 207 F. Supp. at 887.
2. Interlocutory Decree. June 19, 1962, 207 F. Supp. at 897.
3. Further Statement of Facts and Law on the Merits, relating to Interlocutory Decree. June 19, 1962, 207 F. Supp. at 892.
4. Decree of July 31, 1962, filed August 3, 1962, 207 F. Supp. at 898.
5. *Price* v. *Moss* (2 cases), ___ U.S. ___, 83 S. Ct. 1687; *Baldwin* v. *Moss*, ___ U.S. ___, 83 S. Ct. 1687.
6. *Price, et al.* v. *Moss, et al.*, 320 F.2d 917.
7. *Baldwin, et al.* v. *Moss, et al.*, ___ F.2d ___.

GROUNDS FOR APPELLATE JURISDICTION

(a) ***Nature of the Proceeding.***

Plaintiff brought this action asserting deprivation under state law, of civil rights guaranteed to him by the 14th Amendment to the United States Constitution and the Equal

Protection Clause thereof. He asked that the bicameral legislature consisting of house and senate of Oklahoma be declared illegal bodies and that the Constitution and statutes of Oklahoma relating to the apportionment thereof be declared void and their enforcement enjoined, and that all future elections of members of the legislature thereunder, be likewise enjoined. He further asked that the Court make its affirmative order apportioning the Legislature in conformity to population shifts as reflected by the last Federal Decennial Census. He asserted that the failure of the Legislature to so properly reapportion itself had greatly diluted the vote of the plaintiff and others in his class, for legislative officers, and that he was entitled to judicial relief from such legislative malapportionment.

Plaintiff claims a violation of 42 U.S.C., Sec. 1983 (Act of April 20, 1871, C. 22; 17 Stat. 13) conferred jurisdiction upon the United States District Court under 28 U.S.C., Sec. 1343 (Civil Rights). Under the provisions of 28 U.S.C., Secs. 2281 and 2284, a three-judge court was convened to hear the cause.

The three-judge court assumed jurisdiction of the question involving the federal constitution, and on June 19, 1962, by interlocutory decree determined that the existing statutes of Oklahoma relating to the apportionment of both house and senate of the Oklahoma Legislature, were in fact, "invidiously discriminatory" against plaintiff and his class, and thereupon declared the same to be null and void (*Moss* v. *Burkhart*, 207 F. Supp. 885, at 898), and enjoined all future elections of members of either house of the legislature to be held under such statutes. Further adjudging,

however, that the elections then in progress which had commenced with the filing of candidates for nomination on the 26th day of February, 1963, were not regarded as future elections under the purview of said judgment and same might be legally held.

On August 3, 1962, at a further hearing, the three-judge court withheld final judicial action until the 8th day of March, 1963, to give the legislature then in the process of being elected, an opportunity to apportion itself and in its order set forth certain guide lines for reapportionment, indicating that if the same were followed by the legislature such reapportionment would meet requirements of equal protection laws and thus the approval of the three-judge court. (*Moss* v. *Burkhart*, 207 F. Supp. 885, at 898-899.)

In its order of August 3, 1962, the court held as invidious that part of Article 5, Section 10 of Oklahoma Constitution, limiting to the number of seven the maximum of members of the house of representatives elected from any single county, irrespective of population. (*Moss* v. *Burkhart*, 207 F. Supp. 898.)

It also held as invidious, that part of Article 5, Section 9(a) of the Oklahoma Constitution increasing the size of the state senate by assigning additional senators to more populous counties and limiting the number of senatorial districts to a total of 44, and the number of state senators to a total of 44. (*Moss* v. *Burkhart*, 207 F. Supp. 899.)

The general election of November 1962 followed in order and as provided by Constitution, the 29th Legislature met on Monday the 7th day of January, 1963, and during

the session enacted separate acts for the reapportionment of the house and senate of the legislature and referred to the people a constitutional amendment for reapportionment of both houses of legislature designated Senate Joint Resolution No. 4. Where the order and judgment of the three-judge federal court conflicts with the Oklahoma Constitution as above set forth, the legislature followed the Constitution rather than the guidelines suggested by the court.

Pursuant to its previous assignment the District Court heard the evidence of the parties on the 8th day of March, 1963, concerning legislative action by the 29th Oklahoma Legislature applying to reapportionment of the house and senate. After overruling the motion and request of intervening state senator defendants that it abstain from passing upon the constitutionality of such acts until the Supreme Court of Oklahoma had been afforded a reasonable opportunity to judicially determine their legality, the court heard the cause. Thereafter and on the 17th day of July, 1963, the three-judge court entered its final judgment declaring the acts of the 29th Legislature (H.B. 586 and S.J.R. No. 8), unconstitutional and void, and affirmatively reapportioning each house of the Oklahoma Legislature, enjoining the conduct of future elections for legislative officers except in accordance with that apportionment (and state statutes not inconsistent therewith), and adjudging and declaring that those state senators elected in the general election of 1962 for terms of 4 years under Article 5, Section 9, Oklahoma Constitution, would have their terms reduced to 2 years as therein provided. The judgment likewise recited that following the March 8, 1963 hearing of the case the

Oklahoma Legislature had passed Enrolled Senate Joint Resolution No. 4, referring to the people for approval or rejection an amendment to the Oklahoma Constitution providing for reapportionment of both branches of the Oklahoma Legislature, in accordance with a new formula set forth therein, providing for built-in constitutional means for affecting the reapportionment, further providing that it be submitted at the next run-off primary election in 1964. The court however declined to stay its hand and wait the outcome of the vote of the people of Oklahoma thereon.

Plaintiff in this case directly invoked the civil rights act on his asserted claim of deprivation of equal protection of the law by reason of malapportionment amounting to invidious discrimination as to both houses of the legislature on the ba[illegible] he had no adequate remedy elsewhere. He asked for and was granted in final judgment a permanent injunction which exceeded all essential attributes of restraint and in effect amounted to the actual performance by judicial act of a function, which by the Constitution of Oklahoma belonged to the legislative branch of the government and to the people of the state acting under the initiative and referendum provisions of their Constitution. Earlier opinions in this same case were appealed by your appellants from the United States District Court for the Western District of Oklahoma to the Supreme Court of the United States, and to the Court of Appeals of the Tenth Circuit. Both courts declined to entertain the appeals on the basis they were not final, or appealable orders. *Baldwin* v. *Moss*, ... U.S. ..., 83 S. Ct. 1687.

(b) *Dates of Judgment and Appeal.*

The Final Judgment here sought to be reviewed was made and entered herein on July 17, 1963.

Notice of appeal was filed by these appellants in the United States District Court for the Western District of Oklahoma on August 16, 1963.

(c) *Statute Conferring Jurisdiction Upon the Supreme Court.*

This appeal is from an order granting, after hearing, a permanent injunction in a civil action required by law to be heard and determined by a District Court of three judges. The appeal is made pursuant to the provisions of Title 28, U.S.C., Sec. 1253, Act of June 25, 1948, C. 646, 62 Stat. 926.

(d) *Cases Believed to Sustain Jurisdiction of the Supreme Court in This Appeal.*

Appellant submits that the following cases decided by this Court sustain its jurisdiction of this appeal. *Baker* v. *Carr*, 369 U.S. 186; *Gray* v. *Sanders*, 370 U.S. 921; *Florida Lime & Avocado Growers, Inc.* v. *Jacobsen*, 362 U.S. 73; *Kesler* v. *Dept. of Public Safety*, 369 U.S. 153; *Palmetto Fire Ins. Co.* v. *Conn*, 272 U.S. 295; *Harrison* v. *N.A.A.C.P.*, 360 U.S. 167, 79 S. Ct. 1025, 3 L.Ed.2d 1152.

(e) *State Statutes Involved.*

The following provisions of the Constitution and statutes of Oklahoma are involved in this appeal. Due to their length, the full text thereof is set out herein as Appendices, as follows:

Appendix II:

Article V, Sections 1-4, incl., Constitution of Oklahoma (Volume I, pp. 62-63, Oklahoma Statutes 1961);

Article V, Section 30, Oklahoma Constitution;

Article V, Sections 9, 9a, 9b, and 10, Constitution of Oklahoma (Volume I, pp. 64-65, Oklahoma Statutes 1961);

Article V, Section 11, Constitution of Oklahoma (Vol. I, pp. 65-66, Oklahoma Statutes 1961);

Title 14, Sections 9-72, incl., Oklahoma Statutes 1961 (Volume I, pp. 1042-1046, incl., Oklahoma Statutes 1961);

Title 14, Sections 97-100, incl., Oklahoma Statutes 1961 (Volume I, pp. 1047-1051, incl., Oklahoma Statutes 1961);

Appendix III:

Legislative Apportionment—House of Representatives, Chapter 11, H.B. 586, 29th (1963) Oklahoma Legislature;

Appendix IV:

Legislative Apportionment—Senate Joint Resolution No. 8 (now in effect but not officially reported);

Appendix V:

Legislative Apportionment—Senate Joint Resolution No. 4, 29th (1963) Oklahoma Legislature—to be voted on in July, 1964.

QUESTIONS PRESENTED BY THE APPEAL

The following questions, all set out in the Notice of Appeal, or fairly comprised in questions there stated, are presented by this appeal:

(1) May a federal court having permitted the election in November of state senators for a term of 4 years (Art. 5, Section 9, Oklahoma Constitution), thereafter shorten such term to a period of 2 years? (Art. 5, Sec. 30, Oklahoma Constitution.)

(2) Is all or any part of Article V, Sections 9, 9(a) and 9(b), Oklahoma Constitution, relating to apportionment of the state senate, if carried forward into law, productive of invidious discrimination in voting strength, so as to deny equal protection of laws to citizens or classes of citizens, in violation of the Fourteenth Amendment to the United States Constitution?

(3) Does any apportionment law heretofore enacted by the Oklahoma Legislature for the apportionment of the state senate or house of representatives, or both [including HB-585 and SJR-8 of the 29th (1963) Legislature] in whole or in part invidiously discriminate against any citizen or class of citizens, in voting strength or weight of votes, so as to deny to them equal protection of laws in violation of the Fourteenth Amendment to the United States Constitution?

(4) Did the District Court have jurisdiction, or judicial power and authority to order reapportionment of the state senate or the house of representatives of Oklahoma, or both, by judicial decree; or to issue an injunction designed to accomplish that end?

(5) Does the Final Judgment of the District Court, entered herein on July 17, 1963, comply with all provisions of the Constitution and laws of Oklahoma relating to apportionment of the state senate or house of representatives, or both, except for departure necessary to accord citizens or classes of citizens equal protection of laws guaranteed by the Fourteenth Amendment to the United States Constitution?

(6) May a federal court intervene to reapportion a state legislature by judicial decree in the name of preserving to citizens equal protection of laws, when there is available to such citizens a remedy by initiative and referendum, guaranteed by the State Constitution?

(7) Should the District Court have abstained from entering judgment herein pending adjudication by the Supreme Court of the State of Oklahoma in an action therein pending upon questions of Oklahoma law and upon the issues presented in this action? Also, should it have awaited the vote of the people of Oklahoma on Senate Joint Resolution No. 4?

STATEMENT OF CASE

In Oklahoma the people reserved legislative authority unto themselves (Article 5, Sec. 1, Oklahoma Constitution). The means for the exercise of such power was provided in the next section of the Oklahoma Constitution (Article 5, Sec. 2), providing for initiative and referendum. This reservation of legislative authority has been used many times by the people of Oklahoma. This is a definite pronounced distinction between remedies available to plaintiff in the State of Tennessee, and plaintiff in the State of Oklahoma, and challenges the application of *Baker* v. *Carr*, 369 U.S. 186, 82 S. Ct. 691, to the Oklahoma case. The point becomes vitally significant in that from the pleadings it appears plaintiff Moss represents that he and all others similarly situated, predominate in numbers and that on the principle of one person—one vote, there is dilution of their votes in election of their legislative officers.

Such numerical strength however, can be exercised at the polls under the provisions of initiative and referendum where the principle of one person—one vote obtains, and where by sheer weight of numbers plaintiff and his class may obtain their answer. Plaintiff and his class are therefore not without an adequate remedy, the answer being at the polls and not in the courts. The three-judge court had before it the matter of enjoining the election of legislative officers in the year 1962. It declined to enjoin that election. Under Article 5, Section 9, Oklahoma Constitution, a number of state senators, some of the intervenors, were elected at the general election of Novmber, 1962 for a term of 4 years. Those intervening state senators so elected and seated for a term of 4 years may not be removed from the senate except by concurrence of two-thirds of the vote of that body. The three-judge court's final judgment of July 17, 1963, disregarded the Oklahoma Constitution in that regard by reducing the terms of office of such senators to 15 days after the general election in 1964.

At the time of the rendition of the final judgment of July 17, 1963, three legislative enactments had been passed by the legislature subsequent to the decree of August 3, 1962:

House Bill No. 586;
Senate Joint Resolution No. 8;
Senate Joint Resolution No. 4 (for vote in 1964).

House Bill 586 apportioned the house of representatives. Senate Joint Resolution No. 8, apportioned the state senate into 47 districts, each to elect one senator. It was enacted pursuant to the provisions of the Oklahoma Constitution

on a standard of "permanent population," rather than census population. Senate Joint Resolution No. 4 embraces an entirely new apportionment formula. It will be voted on in May, 1964 and if adopted will amend the Constitution of the State.

Neither House Bill 586, Senate Joint Resolution No. 8, or Senate Joint Resolution No. 4 have been passed upon by the Supreme Court of Oklahoma and it has been afforded no opportunity to determine the constitutionality of the acts of the 29th Session (1963) legislature relative to apportionment.

Under the doctrine of abstention, the Federal Court should abstain from ruling thereon until the Supreme Court of Oklahoma has had such opportunity.

REASONS FOR PLENARY CONSIDERATION

This case involves the important determination whether or not a federal court may intervene as it did in *Baker* v. *Carr*, where the plaintiff has available to him the constitutional remedy of the initiative and referendum. Especially where plaintiff claims that he and his class predominate on a numerical basis.

If it should be decided that a federal court could under such circumstances nevertheless intervene to correct an alleged political injustice, may such court go so far as to perform the legislative act of reapportionment by judicial decree, establishing boundaries of districts and tenure of office of both houses on population factor, disregarding all other factors?

Consideration must need be given also to the power of a federal court to reduce a four-year term of office of state senator to two years in view of Article 5, Sec. 30, Oklahoma Constitution.

Still further may a federal court after taking notice of the pendency of a vote of the people of Oklahoma on an amendment to its Constitution providing for reapportionment, disregard the same and proceed with judicial reapportionment?

As very cogently stated by MR. JUSTICE CLARK in his concurring opinion in *Baker* v. *Carr*, 369 U.S. 186, 82 S. Ct. 691, at page 732:

> "Although I find the Tennessee apportionment statute offends the Equal Protection Clause, I would not consider intervention by this Court into so delicate a field if there were any other relief available to the people of Tennessee. But the majority of the people of Tennessee have no 'practical opportunities for exerting their political weight at the polls' to correct the existing 'invidious discrimination.' Tennessee has no initiative and referendum. I have searched diligently for other 'practical opportunities' present under the law. I find none other than through the federal courts. The majority of the voters have been caught up in a legislative strait jacket."

No such strait jacket exists in Oklahoma.

In this case the three-judge court has far exceeded its power by entering the field of legislation and political science and affirmatively apportioning a state legislature in both houses by judicial decree upon the sole factor of population, disregarding state constitutional equal require-

ments of geographical compactness of senatorial districts and other significant factors.

For these and other reasons inherent therein, we submit the questions presented are substantial, of historic importance on the principle of reservation of legislative powers to the people and under the circumstances established, render unnecessary the intervention of the federal court for protection of plaintiff's rights under the Fourteenth Amendment to Federal Constitution.

Therefore, intervening state senator-appellants, request plenary consideration of the questions presented, with briefs on the merits and oral arguments for their resolution.

Respectfully submitted,

JIM A. RINEHART, of
RINEHART, RINEHART & RINEHART,
El Reno, Oklahoma,

Attorney for Intervening State Senators.

October, 1963.

APPENDIX

APPENDIX I.

MEMORANDUM OF DECISION AND FINAL JUDGMENT

This matter came on for further hearing on March 8, 1963, pursuant to Order of August 3, 1962. The plaintiff, Moss, appeared by his attorney, Mr. Sid White. Mr. Norman Reynolds, who represented the Governor when these proceedings were commenced, appeared pro se and with Mr. G. T. Spradling, attorney for the Council of Democratic Neighborhood Clubs. Mr. Delmer Stagner, who represented Mr. William Burkhart, State Treasurer, when these proceedings were commenced, appeared for Mr. Burkhart, individually, as an intervening plaintiff. Mr. Charles Nesbitt, Attorney General, who has succeeded to office since the August hearing, and his First Assistant Mr. W. J. Monroe, appeared representing the present State Treasurer, Cowboy "Pink" Williams, substitute defendant for Mr. Burkhart; Mr. S. F. Shaw, State Auditor, substitute defendant for Mr. Andy Anderson; the members of the Oklahoma Tax Commission, who were original defendants and now compose the Commission; and, the present members of the State Election Board, substitute defendants for the original defendant members. The present Governor of the State, who succeeded to his office since the commencement of the proceedings, did not appear in person or by counsel. His predecessor having been made a party, and having participated in the proceedings, the present Governor is automatically substituted as a party, upon succession to the office. The intervening State Senators and the parties intervening as Oklahomans for Local Government, appeared by their Attorneys, Mr. James Rinehart, Senator Walt Allen, Mr. Leon Hirsh, and Mr. James C. Harkin. Mr. Frank Carter appeared for the Oklahoma Farm Bureau and Mr. Lewis H. Munn. Mr. Richard McKee was allowed to inter-

vene for Mrs. Phyllis P. Brodski, a taxpayer and registered voter. Mr. Tom Tate appeared, as a member of the House of Representatives, and filed a Memorandum. Mr. U. Simpson Tate appeared as attorney for A. Willie James, J. W. Simmons, J. W. Tyler and Amos T. Hall, as interested parties, and has filed Requested Findings of Fact and Conclusions of Law. The Congress of Parents and Teachers, and The League of Women Voters filed separate briefs amicus curiae, in support of thei respective plans for re-apportionment.

Pursuant to the August 1962 hearing, on Motion of the intervening Senators and Oklahomans for Local Government, to alter and amend the interlocutory decree of June 19, 1962, the Court did clarify the decree to apply to the elections of 1964 and all future elections following the 1962 election, which was then in being. Upon consideration of the remedies urged upon the Court at the August hearing, for redress of the deprivation or impairment of voting rights, vouchsafed to the plaintiff and his class by the Fourteenth Amendment, the Court decided to defer further action to the 1963 general session of the Oklahoma Legislature, to be convened early in the following January. Further hearing on the remedies to be afforded the aggrieved class, was accordingly passed until March 8, 1963.

In the extraordinary circumstances, it was deemed appropriate to promulgate some guidelines or standards which, in the judgment of the Court, would insure compliance with the equal protection of the laws, with respect to the exercise of sufferage rights for the election of members of both branches of the Oklahoma Legislature. Consistent with our previously declared fundamental principle of apportionment based on substantial numerical equality, as firmly enunciated in the Oklahoma Constitution, and our concept of the requirements of the Fourteenth Amendment, we stated that the House of Representatives should

be reapportioned in accordance with the mandate of the Oklahoma Constitution, except as to the ceilings established in Section 10(d), Article V for populous counties. As to that, we were of the view that the arbitrary restrictions thus imposed, was invidiously discriminatory against the plaintiff and his class; hence, constitutionally intolerable. We left the matter of forming Legislative Districts among the counties, for both the House and the Senate, to the discretion of the Legislature, subject only to the requirement of the Oklahoma Constitution and the Fourteenth Amendment with respect to substantial numerical equality and contiguity, "* * * so that each voter of the State will have approximately the same power and influence in electing members of the two houses of the Legislature and in passing legislation, as every other voter." Jones v. Freeman, 146 P.2d 564, 567. In that respect, we recommended the Proposed Order And Decree, filed on July 30, 1962, by the then Acting Attorney General, as a practical and helpful guide to the orderly reapportionment for both Houses. See: Price v. Moss; Oklahoma Farm Bureau v. Moss, 207 F. Supp. 885; Review Denied, Nos. 688-689 (June 11, 1963) 31 L.W. 3405.

Having thus invoked the spirit and intent of the Oklahoma Constitution, as a reliable guide for compliance with the Fourteenth Amendment, and having been assured by the leaders of the Oklahoma Legislature, in open Court, that once their constitutional duty was made clear, it would be discharged with befitting honor and fidelity, we withheld any redress for deprivation of the plaintiffs' rights, by the prolonged malapportionment. We were also mindful of the pendency of an Initiative Petition, providing for a Constitutional Commission, to reapportion the Legislature in accordance with the Oklahoma Constitution, and the prospects of its submission to the people at the November election.

[APPENDIX]

At the November election, the Initiative Petition did receive an affirmative majority of the total votes cast on the Petition (335,045 to 273,287, or a majority of 61,758). The then Governor proclaimed that it had become law. The Commission created thereunder was constituted, and proceeded to reapportion both houses of the Legislature, in accordance with the Oklahoma Constitution, except only to the extent necessary to comply with the guidelines set out in the August 3, 1962 Order of this Court.

The intervening Senators filed in the Oklahoma Supreme Court, an original action to annul the Initiative Petition, on the ground that it had not received the constitutionally required affirmative vote, and to litigate the identical constitutional issues heretofore presented for decision in this proceedings. On petition of the plaintiff and his class, to enjoin the intervenors from prosecuting the original proceedings in the Supreme Court of Oklahoma, we restrained the parties from relitigating the constitutional questions presented here, but deferred to the Oklahoma Court the resolution of the question whether the Initiative Petition had become the law of the State. See: Memorandum Decision Granting Restraining Order, attached as Appendix "A"; Review Denied, Baldwin v. Moss, No. 864 (June 11, 1963), 31 L.W. 3405. In the State proceedings, the Supreme Court determined that the Initiative Petition "failed of adoption for lack of sufficiency of affirmative votes." Allen v. Burkhart, 377 P.2d 821.

When this cause came on for hearing on March 8, 1963, for further consideration of the remedy to be afforded to the plaintiff and his class, the intervening Senators offered Oklahoma Senate Resolution No. 8 and Enrolled House Bill No. 586, and urged them upon the Court, as an appropriate and adequate remedy for the malapportionment of the Oklahoma Legislature under previously existing legislation. They took the position that the legislation complied with

the Oklahoma Constitution and with the equal protection clause of the Fourteenth Amendment. The plaintiff and allied intervenors took the position that the legislation was wholly inadequate to achieve constitutional reapportionment, and to provide the remedy for impairment of their voting rights. The League Of Women Voters and The Congress Of Parents And Teachers offered a plan for reapportionment of both Houses of the Legislature, in accordance with a "standard deviation formula," and testimony in support of it. The plan provides a simple and facile method for reapportioning the Legislature on the basis of population.

The legislation urged upon us by the intervening Senators as an appropriate remedy, has passed both Houses of the Legislature, and has been signed by the Governor, but no effort was made to attach the emergency clause. Article V, Section 58 of the Oklahoma Constitution provides that such legislation does not become effective until ninety (90) days after the adjournment of the legislative session at which the legislation was passed, i.e., June 14, 1963. Moreover, under Article V, Sections 1 and 4 of the Oklahoma Constitution, the legislation may be referred to a vote of the people, on petition of five per cent (5%) of the voters, filed with the Secretary of State, within ninety (90) days after the final adjournment of the session, and before the legislation becomes effective.

Since the legislation is not presently effective and may never be effective, it cannot presently affect the rights of the complaining parties, and they, therefore, have no standing to challenge its constitutionality. In this posture, it would be inappropriate for this Court to adjudge the purely hypothetical constitutional question. See: Coffman v. Breeze, 323 U.S. 316; Federation of Labor v. McAdory, 325 U.S. 450; Rescue Army v. Municipal Court of Los Angeles, 331 U.S. 549; and City of Oklahoma City v. Dulick (10 CA), F.2d .

But even so, we are immediately concerned with an appropriate remedy for the deprivation of a civil right, and while time is not of the essence of the right, it is, to be sure, an important consideration, if relief is to be granted in the foreseeable future. It is important to note that candidates for legislative office, the term of which expires in November, 1964, must file notification and declaration of candidacy with the Election Board during the filing period, beginning the fourth Monday in February, before the day fixed by law for the regular primary election in 1964. See: 26 O.S. §163. As the matter now stands, the present legislative apportionment laws have been declared prospectively null and void, and if the recent legislation should not become effective by reason of the inherent contingencies, there can be no valid election for the legislative offices involved. Enrolled House Bill No. 586 and Senate Resolution No. 8, having been passed and signed by the Governor, cannot be recalled for amendment. If they should be referred to referendum, they must be voted up or down—they either become the law as enacted, or nullified by a vote of the people.

In these circumstances, it becomes manifestly important to settle the apportionment law applicable to the forthcoming election, both in the interest of the plaintiff-electors and those who are to seek legislative office. We are thus brought to the necessity of examining the inchoate legislation, for the purpose of deciding whether, as applicable law, it would afford adequate redress for the deprivation of a civil right. We have examined the legislation with care, and have come to the conclusion that it does not afford the remedy which the Federal Constitution commands.

The House Bill purports to comply with the Oklahoma Constitution. It does not purport to comply with the guidelines set out in the August 3, 1962 Order of this Court. But, the legislation is not, for that reason, an unaccept-

able remedy for invidious discrimination. The Fourteenth Amendment requires precise equality among electors for state-wide offices, or for an office within an electorial district. See: Gray v. Sanders, 372 U.S. 368. But, it does not demand precise political equality as between qualified voters, for the election of legislative representatives from different electorial districts. We know that there is "room for weighting" and "rough accomodation," within the framework of the equal protection clause of the Fourteenth Amendment. Baker v. Carr, 369 U.S. 186; and Norvell v. Illinois, ... U.S. ..... (Oct. 1962). Our guidelines were not promulgated as an inexerable rule or guide for the achievement of the equal protection of the laws, in the apportionment of the Oklahoma Legislature. We recognized then, as indeed we do now, that the equal protection clause requires only a rational basis for disparity in voting strength, for legislative representation. Throughout this litigation, however, we have proceeded upon the premise that the gross disparity and deliberate refusal to reapportion, in accordance with the plain mandate of the Oklahoma Constitution, i.e., See: Radford v. Gary, 145 F.Supp. 541, is prima facie evidence of a hostile disposition to discriminate. And, we have called upon those who would support the disparity to show a rational basis for it.

The vice of this most recent legislation lies in the absence of any rational basis for the manifest disparity. In practical effect, it provides little or no relief for malapportionment under antecedent laws. Under this legislation, the Representative Districts vary in population from 11,700 to 62,800. We think it more than coincidental that whereas, under antecedent laws, 29 per cent of the people of Oklahoma could elect a majority of the lower House, under the prospective House Bill, 30.2 per cent can elect a majority of the lower House in the second session of this decennial; 31.2 per cent can elect a majority in the third session; 33.5

per cent in the fourth session; and, in the fifth session, 28.5 per cent may elect the majority. Thus, in this decade, an average of 31 per cent of the people would elect a majority of the lower house, i.e., a 2 per cent increase over the antecedent discriminatory laws. This result is brought about by adherence to the arbitrary ceilings on the number of representatives to be elected from the most populous counties, under Section 10(d), and through skillful manipulation of the "floats," provided in Section 10(e), Article V, of the Oklahoma Constitution.

The same invidious purpose is even more manifest in Senate Resolution No. 8, where the disparities between districts run the scale from 115,300 to 24,400, or a ratio of 4.73 to 1. No rational basis was shown for this disparity. The Resolution does not purport to comply with either the Oklahoma Constitution, or with this Court's guidelines for compliance with the equal protection clause of the Fourteenth Amendment. The Oklahoma Constitution specifically provides that each of the "* * * [electorial] districts shall contain as near as may be an equal number of inhabitants, such population to be ascertained by the next preceding Federal census, or in such manner as the Legislature may direct." Article V, Section 9(a). Presuming to act under color of the latter clause of this constitutional provision, the Oklahoma Legislature in Senate Resolution No. 8 undertook to depart from the decennial Federal census, for what it called the "permanent population standard," for determining representation. In the first place, a double standard was used to arrive at the legislated apportionment, in that the "permanent population standard" was used in Oklahoma and Tulsa Counties, while the Federal census was used elsewhere. In the second place, the proof shows that the apportionment in Oklahoma and Tulsa Counties is not truly based upon the erected standard. There was nothing to indicate, or from which it can be said, that the classi-

fication rests upon any rational basis. Such gross disparity cannot be justified by "historical precedents," as in Maryland Committee For Fair Representation v. Tawes, 184 A.2d 715. Nor, by traditional legislative autonomy of counties, as in Sobel v. Adams, 208 F.Supp 316. Nor, by the political, social and economic heterogeneity, recognized in Lisco v. McNichols, 208 F.Supp 471. We think our situation more nearly like Sims v. Frink, 208 F.Supp 431. From the proof before us, it is manifest that the legislative apportionment, under Senate Resolution No. 8, is a patch-work of political maneuvering and manipulation, to perpetuate the same invidious apportionment which prevailed under the antecedent laws. One of the intervening Senators, attorney and spokesman for the group, expressed it quite succinctly and truthfully, we think, when he testified simply that the legislation "was all the Senate would go for."

Intervenors, A. Willie James, J. W. Simmons, J. W. Tyler and Amos T. Hall, specifically attack this legislation as operating to deprive the negro voters in Oklahoma and Tulsa Counties of the equal protection of the laws. They contend that the prescribed districts within those Counties are gerrymandered, in a manner to effectively discriminate against their race, to the end that their voting strength will be unconstitutionally impaired. In view of the immaturity of the legislation, and our treatment of it for the purpose of this case, we do not reach the issue presented by these Intervenors.

Since the enactment of Enrolled House Bill No. 586 and Senate Resolution No. 8, and following the March 8th hearing of this case, the Legislature has passed Enrolled Joint Senate Resolution No. 4. The Resolution refers to the people proposed amendments to the Oklahoma Constitution, providing for reapportionment of both branches of the Oklahoma Legislature, in accordance with a new formula set forth therein, and providing built-in constitutional means

for effecting the reapportionment. It provides that the amendments shall be submitted for adoption or rejection, on the date of the next run-off primary election, which according to State law, will occur in 1964. If the amendments should be submitted and adopted, the Legislature convening in 1965 must act within sixty (60) days, upon failure of which the Apportionment Commission created by the amendments, will proceed to do so, in accordance with the proposed constitutional formula. No one has tendered this Joint Senate Resolution as an appropriate remedy in this case, and we take notice of it only for the purpose of determining whether, in view of its provisions and likelihood of its passage, we should again stay our hand, and await the outcome. In the light of the initiative and referendum history of the State of Oklahoma (see: Appendix—Title 34, O.S.A.) the adoption of the amendments as the constitutional law of this State, seems improbable. Moreover, there is nothing on the face of the proposed amendments to justify the gross disparity between electoral districts for both Houses, as provided therein.[1] In any event, we shall say

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[1] Section 1 of the Joint Resolution provides that the State shall be apportioned into 48 Senatorial Districts, in the following manner: "• • • the nineteen most populous counties, as determined by the most recent Federal Decennial Census, shall constitute nineteen senatorial districts with one senator to be nominated and elected from each district; the fifty-eight less populous counties shall be joined into twenty-nine two-county districts with one senator to be nominated and elected from each of the two-county districts • • •." A rough calculation, based upon the Federal census, will show that the disparities between the 19 most populous electoral districts will range from less than 30,000 in the smallest of the one-county senatorial districts, to approximately 440,000 in the largest of the one-county senatorial districts. The disparity is even greater (less than 15,000 to approximately 440,000) between the least populous two-county district and the most populous one-county district. The Section creating these districts provides that "consideration shall be given to population, compactness, area, political units, historical precedents, economic and political interests, contiguous territory, and other major factors,

nor do nothing to interfere with the right of the people to speak freely upon the question. Meanwhile, the improbabilities of its adoption and its doubtfulness as a remedy, will not justify further stay of these proceedings.

After careful consideration of all the exigencies, we have reluctantly decided to reapportion the Oklahoma Legislature by judicial decree, because we are convinced, from all that has transpired in this prolonged proceedings, that the Legislature, as now constituted, is either unable or unwilling to reapportion itself, in accordance with our concept of the requirements of the equal protection clause of the Fourteenth Amendment. We assume this responsibility, fully aware of its gravity and perplexity. We know, of course, that the function of apportioning the State Legislature is essentially legislative in nature; one which the Courts have never before undertaken; and one from which we may very well be precluded, even in the face of inadequate redress for the deprivation of civil rights. We know that the judicial power to grant redress for deprivation of a civil right is usually a negative power, effected by conventional injunctive decree. It may well be that the affirmative relief we grant is in excess of our judicial power. If so, we will know in due time, for the questions are squarely presented, and will undoubtedly be authoritatively decided during the next term of the Supreme Court. See: WMCA, Inc. v. Simon, No. 460; Wesberry v. Vandiver, No. 507; Reynolds v. Sims, No. 508; Vann v. Frank, No. 540; Mary-

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[1] (Continued)

• • •" but there is nothing to indicate that consideration was given to these factors in the creation of the districts, which would be immutably created, unless and until changed by further constitutional amendment.

The formula provided in the amendment for reapportionment of the House of Representatives, gives every county one Representative, and by the utilization of ratios, progressively restricts representation in the most populous counties.

land Committee On Fair Representation v. Tawes, No. 554; McConnell v. Frink, No. 610; Davis v. Mann, No. 797; and Wright v. Rockefeller, No. 950 (June 11, 1963) 31 L.W. 3404. Meanwhile, we shall proceed on the fundamental premise that equity is never impotent before the law.

In the suggested Findings of Fact and Conclusions of Law, filed by the intervening Senators, we are asked to abstain, and to await adjudication of the constitutionality of this most recent legislation by the State courts. But, in the circumstances, we think it would be unwise and, in effect, a deprivation of the constitutional rights of the plaintiff and his class, to await State court proceedings, which have not been instituted and which, in any event, would not resolve the ultimate question of the appropriateness of the remedy for the redress of a civil right, asserted in this proceedings. The suggestion will, therefore, be denied.

This brings us to the form of relief which is to be afforded, or more specifically, the form of Order for the remedy. While, as we have seen, the equal protection clause of the Fourteenth Amendment is content with fundamental fairness in the exercise of voting rights, *if apportionment is to be our lot, we should not stop short of the ideal.* Of all the plans for reapportionment which have been urged upon us, as an appropriate remedy, we have been favored with a formula which approaches the ideal, to reapportion the Legislature "as near as may be to the equal number of inhabitants" of each district. This plan, known in the proof here as Model C, is submitted by The Bureau of Government Research, of the University of Oklahoma. It represents the judgment of the Acting Attorney General of the State, when this matter was previously under consideration for appropriate remedy. It is an embodiment of the best thinking and contribution of the political scientists and statisticians, who have testified in this case, concerning the critical question of discrimination. We adopted it as

our guideline in our August 3rd Order. When State Question No. 408, Initiative Petition No. 271, providing for a Commission to reapportion the Legislature, was declared to have passed, by proclamation of the Governor, the *de facto* Commission, created thereunder, adopted the Model as affording the most effective plan for reapportioning the Legislature, in accordance with the Oklahoma Constitution and the guidelines of our August 3, 1962 Order. We now adopt it as the pattern for Final Judgment of this Court, and in accordance with the following Order Of Reapportionment.

ORDER OF REAPPORTIONMENT

The Legislature of the State of Oklahoma is hereby apportioned, as hereinafter provided, for the purposes of all future elections within the Decennial, beginning the 16th day after the general elections in November, 1962 and ending the 15th day after the general election in November, 1972, unless and until the Legislature, elected and constituted by virtue of this apportionment, shall reapportion itself, in accordance with the requirements of the equal protection clause of the Fourteenth Amendment:

The ten-year period beginning the 16th day after the general election in November 1962, and ending the 15th day after the general election in November 1972, shall constitute a Decennial Legislative Period of the Legislature of the State of Oklahoma, and said period is hereby divided into five legislative periods of two years each.

The first legislative period shall begin on the 16th day after the general election in November 1962, and end with the 15th day after the general election in November 1964. Senators and representatives heretofore elected at said November 1962 general election shall serve during said first legislative period.

The second legislative period shall begin on the 16th day after the general election in November 1964, and end with the 15th day after the general election in November 1966.

The third legislative period shall begin on the 16th day after the general election in November 1966, and end with the 15th day after the general election in November 1968.

The fourth legislative period shall begin on the 16th day after the general election in November 1968, and end with the 15th day after the general election in November 1970.

The fifth legislative period shall begin on the 16th day after the general election in November 1970.

THE SENATE

The Oklahoma State Senate shall consist of 44 members, who shall be apportioned during the second, third, fourth and fifth legislative periods prescribed herein among the 44 senatorial districts of the State. The terms of office of Senators elected in the November 1960 general election, as well as those elected at the November 1962 election, will end with the 15th day after the general election of November 1964. The apportionment of the counties of the State into said 44 senatorial districts, in each of which one Senator will be nominated and elected, shall be as follows:

DISTRICT NUMBER			NUMBER OF SENATORS
District	1	Beaver, Cimarron, Harper, Texas, Woods, Woodward	1
District	2	Beckham, Ellis, Greer, Roger Mills, Washita	1
District	3	Harmon, Jackson, Tillman	1
District	4	Blaine, Caddo, Kiowa	1
District	5	Alfalfa, Custer, Dewey, Grant, Major	1

District 6	Kingfisher, Lincoln, Logan	1
District 7	Garfield	1
District 8	Canadian, Grady	1
District 9	Cotton, Jefferson, Stephens	1
District 10-11	Comanche	2
District 12	Carter, Love, Marshall	1
District 13	Atoka, Garvin, Johnston, Murray	1
District 14	Pontotoc, Seminole	1
District 15	McClain, Pottawatomie	1
District 16	Cleveland	1
District 17-24	Oklahoma	8
District 25	Payne	1
District 26	Noble, Osage, Pawnee	1
District 27	Kay	1
District 28	Nowata, Washington	1
District 29-35	Tulsa	7
District 36	Okmulgee, Wagoner	1
District 37	Creek, Okfuskee	1
District 38	Coal, Hughes, Pittsburg	1
District 39	Bryan, Choctaw, Latimer, Pushmataha	1
District 40	LeFlore, McCurtain	1
District 41	Cherokee, Haskell, McIntosh, Sequoyah	1
District 42	Muskogee	1
District 43	Adair, Delaware, Ottawa	1
District 44	Craig, Mayes, Rogers	1
		44

PROVIDED, however, that until the Legislature, as apportioned hereunder, shall by appropriate legislation prescribe the boundaries of the Districts, within any one County of the State entitled to elect more than one Senator, under the provisions of this Order, the candidates for such senatorial offices shall be nominated and elected at large within such Counties; and,

PROVIDED FURTHER, that each such senatorial office shall be designated and distinguished numerically, accord-

ing to the number of Senators and numerical Districts to which such County is entitled, and all filings of notification and declaration for nomination and election, pursuant to 26 O.S. §163, to any of the offices herein provided, shall designate the number of the office to which the filings are intended to apply.

Senators elected from even numbered Districts for the above second legislative period shall hold office until the 15th day succeeding the general election in November 1966, and Senators elected from the odd numbered Districts for said legislative period shall hold office until the 15th day succeeding the general election in November 1968. The office number and term, in Counties entitled to more than one Senator, shall correspond to the District number and term, as herein provided. The term of office of each Senator thereafter elected shall be four years.

The Election Board of the State of Oklahoma, and all those acting by and under its authority, are hereby ordered and directed to accept filings and conduct elections, in accordance with the provisions of this Order and the applicable provisions of Title 26, Oklahoma Statutes, as amended, and they are hereby enjoined and restrained from accepting filings or conducting elections in any manner inconsistent with the provisions of this Order and the statutes of the State of Oklahoma, not inconsistent herewith.

THE HOUSE OF REPRESENTATIVES

Representatives assigned to each County for each of the five legislative periods, other than for the first period, shall be elected at the general election in the month of November, next preceding the commencement of the respective legislative period.

The representation in the House of Representatives of each County of Oklahoma for the last four legislative periods defined herein, shall be the number listed in the

table hereinafter set forth. The number of representatives assigned to each County for each of the five legislative periods, other than for the first period, is shown in the following table. The name of each County and the names of attached Counties are given in said table, and the number of representatives to which same are entitled are listed under the columns designated for said legislative periods, as follows:

COUNTIES	2ND LEG. PERIOD	3RD LEG. PERIOD	4TH LEG. PERIOD	5TH LEG. PERIOD
Alfalfa-Grant	1	1	1	1
Atoka-Coal	1	1	1	1
Beaver-Harper	1	1	1	1
Beckham-Roger Mills	1	1	1	1
Blaine-Kingfisher	1	1	1	1
Cimarron-Texas	1	1	1	1
Cotton-Jefferson	1	1	1	1
Dewey-Major	1	1	1	1
Ellis-Woodward	1	1	1	1
Greer-Harmon	1	1	1	1
Haskell-McIntosh	1	1	1	1
Johnston-Murray	1	1	1	1
Latimer-Pushmataha	1	1	1	1
Love-Marshall	1	1	1	1
Noble-Pawnee	1	1	1	1
Nowata-Craig	1	1	1	1
Adair	1	1	1	1
Bryan	1	1	1	1
Caddo	1	1	1	2
Canadian	1	1	1	1
Carter	2	2	1	1
Cherokee	1	1	1	1
Choctaw	1	1	1	1
Cleveland	2	2	2	2
Comanche	4	4	4	4
Creek	2	2	1	1

Custer	1	1	1	1
Delaware	1	1	1	1
Garfield	2	2	2	2
Garvin	1	1	1	2
Grady	1	1	2	1
Hughes	1	1	1	1
Jackson	1	1	1	2
Kay	2	2	2	2
Kiowa	1	1	1	1
LeFlore	1	1	1	2
Lincoln	1	1	1	1
Logan	1	1	1	1
McClain	1	1	1	1
McCurtain	1	1	1	1
Mayes	1	1	1	1
Muskogee	3	3	2	2
Okfuskee	1	1	1	1
Oklahoma	19	19	19	19
Okmulgee	1	2	2	1
Osage	2	1	1	1
Ottawa	1	1	2	1
Payne	2	2	2	2
Pittsburg	1	2	2	1
Pontotoc	2	1	1	1
Pottawatomie	2	2	2	2
Rogers	1	1	1	1
Seminole	1	1	1	1
Sequoyah	1	1	1	1
Stephens	2	2	1	1
Tillman	1	1	1	1
Tulsa	15	15	15	15
Wagoner	1	1	1	1
Washington	2	2	2	2
Washita	1	1	1	1
Woods	1	1	1	1
	109	109	107	107

PROVIDED, however, that until the Legislature, as apportioned hereunder, shall by appropriate legislation prescribe the boundaries of the Districts, within any one County of the State entitled to elect more than one Representative under the provisions of this Order, the candidates for such representative offices shall be nominated and elected at large within such Counties; and,

PROVIDED FURTHER, that each such office shall be designated and distinguished numerically, according to the number of Representatives to which such County is entitled, and all filings of notification and declaration for nomination and election, pursuant to 26 O.S. §163, to any of the offices herein provided, shall designate the number of the office to which the filings are intended to apply.

The Election Board of the State of Oklahoma, and all those acting by and under its authority, are hereby ordered and directed to accept filings and conduct elections, in accordance with the provisions of this Order and the applicable provisions of Title 26, Oklahoma Statutes, as amended, and they are hereby enjoined and restrained from accepting filings or conducting elections in any manner inconsistent with the provisions of this Order and the statutes of the State of Oklahoma, not inconsistent herewith.

Dated this 17th day of July, 1963.

/s/ Alfred P. Murrah
Alfred P. Murrah

/s/ Ross Rizley
Ross Rizley

/s/ Fred Daugherty
Fred Daugherty

[APPENDIX]

[*Appendix A to Memorandum of Decision and Final Judgment*]

MEMORANDUM OF DECISION GRANTING RESTRAINING ORDER

By Order entered January 15, 1963, this Court restrained the intervening senators from further prosecuting in the Oklahoma Supreme Court an original action involving constitutional issues relating to the Oklahoma apportionment laws which are now in process of litigation in this Court and in this suit. Inasmuch as the intervenors have filed notice of appeal from our Order to the Supreme Court of the United States and to the Court of Appeals, and in view of the protracted course of the litigation, it seems appropriate to bring the Order into its proper context.

When this suit was commenced pursuant to Baker v. Carr, the responsible executive state officers who were made defendants all promptly entered their appearance and consented to the jurisdiction of the Court over the subject matter and their person. The Governor, the Secretary of State, the State Treasurer and the State Election Board all answered confessing the truth of the complaint, and agreeing that the complainant and his class were entitled to the relief sought. The Governor, joined by the other defendants, freely confessed that all available state remedies had been exhausted, and that recourse to the federal court under Baker v. Carr was the only remaining course of action. And see statement of the case in *Moss* v. *Burkhart*, 207 F.Supp 885, 889.

At the April 23, 1962 hearing, on plaintiff's application to enjoin the forthcoming May 1st primary election, the responsible defendants urged us to grant an injunction; the Governor offered to convoke an extraordinary session of the Legislature for the purpose of enacting apportionment laws in compliance with the mandate of the Constitution of the State of Oklahoma and the equal protection clause of the 14th Amendment.

After the hearing, but before final decision, a group of individuals calling themselves "Oklahomans for Local Government" were permitted to intervene. They suggested the absence of necessary parties-defendant and further suggested that in view of the confessions of the defendant-state officials, the proceedings was not adversary, and that there should be a realignment of the parties. They specifically denied malapportionment of the Legislature under existing laws and offered to show a rational basis for the existing apportionment. They affirmatively alleged that the apportionment in accordance with the mandate of the Oklahoma Constitution would operate to deny them and their class the equal protection of the laws guaranteed by the 14th Amendment. Finally, it was alleged that the power to reapportion was vested exclusively in the State Legislature, and that it should be afforded an opportunity to perform its constitutional function either in a special session or the next general session.

At the conclusion of the hearing, the Court sustained its jurisdiction of the subject matter as a justiciable controversy. The majority of the Court refused to enjoin the forthcoming primary election, but called attention to the manifest disparity in the elected representation of both branches of the Oklahoma Legislature, and suggested that on the face of the disparity, the plaintiff was entitled to relief under the plain mandate of the Oklahoma Constitution and the 14th Amendment to the federal Constitution. The case was set for trial approximately 50 days later on the issue of rationality of the admitted disparity. When the case came on for trial, plaintiff and those aligned with him, offered evidence without objection tending to show that the disparity in the legislative apportionment was invidiously discriminatory; that apportionment on a numerical basis was the starting point to achieve equal protection of the laws with respect to the election of representatives to the Oklahoma Legislature. The Attorney General of the

State submitted a formula for reapportionment based primarily upon the requirements of the Oklahoma Constitution, modified to comply with the requirements of the 14th Amendment to the federal Constitution. The first intervenors, though present by counsel and participating, offered no evidence on the issue of rationality. Based upon the evidence adduced, the trial court found that the apportionment was invidiously discriminatory, and that the underlying election laws were prospectively void. But no final relief was decreed or granted. Instead, the case was passed until September 10, 1962 for determination of appropriate remedies. At the same time the Court suggested three probable remedies: (1) apportionment by the Legislature in special session; (2) the pending initiative petition; and (3) judicial intervention only as a last resort. And, in that connection, we noted that in the event it became necessary to bring about reapportionment by judicial intervention, it would be time enough to hear and consider any factors which might enter into the reapportionment equation. See Moss v. Burkhart, p. 895.

Before the date set for the hearing on September 10, the first intervenors moved to alter, amend or clarify the decree. On the day before the motion came on for hearing, and on July 30, the intervening senators, represented by the same counsel who represented the first intervenors, moved for permission to intervene, alleging that they should have been joined as parties from the beginning, and prayed that they be permitted to intervene to protect themselves and "their own civil and political rights." Intervention was allowed. In their answer, they acknowledged jurisdiction of the Court to determine the applicability of the 14th Amendment to the rights and claims of the plaintiff, but denied the power of the court to alter or revise the structure of the legislative department of the State in a manner to interfere with the existence, validity or the incumbency of their respective elective offices. They specifically alleged

that any apportionment based upon census population, as provided in the Oklahoma Constitution, would be invidiously discriminatory against them and in contravention of their rights under the 14th Amendment. Finally, they pray "that the issues raised by the plaintiffs and the defendants as herein controverted be tried and determined in the regular course, fully protecting the rights and interest of these answering defendants under the federal Constitution and laws. * * *"

At the hearing on the motion to modify the June 19 interlocutory decree, one of the intervening senators, apparently appearing on behalf of all of the intervening senators, testified in response to direct questions from the court and counsel that he would "vote for * * * and support * * * with all my might and vigor * * *" the final adjudication of the constitutional issues in this court.

Pursuant to the hearing on the motion to alter and amend, the Court clarified its interlocutory decree of June 19, to specify that it did not affect the validity of the forthcoming general election; and that the interlocutory decree applied prospectively to elections in 1964 and thereafter. Further hearing in the case was set approximately 5 months later on March 8, 1963. Meanwhile, a new Legislature would have been elected and in session for approximately 60 days. As a guideline for an appropriate remedy for the malapportionment, the Court expressed the positive view that the Legislature should be reapportioned substantially in accordance with the Oklahoma Constitution and in accordance with a plan and formula submitted by the State Attorney General.

The initiative referendum providing in substance for the creation of a constitutional commission to reapportion the Legislature in accordance with the existing provisions of the Oklahoma Constitution was submitted to the people on November 6, and the question arose whether the initia-

tive petition had received the required vote of the people and had become the law of the land. The plaintiffs and the responsible state officials sought to clarify the question in this Court as a necessary incident to the determination of appropriate remedies.

About the same time, the intervenors filed a proceedings, first, in the State District Court and then an original proceedings in the Supreme Court of Oklahoma. The original proceedings was an action in the nature of a bill quia temit "to prevent anticipated mischiefs which could not after their occurrence be adequately redressed." The first cause of action sought a declaration to the effect that the initiative petition did not receive the number of required votes and did not become law. The second and third causes of action alleges substantially the same subject matter set forth in their petition for intervention in this case, and seeks substantially the same affirmative relief. When the plaintiff's motion to declare that the initiative petition had become the law of the State came on for hearing in this case, our attention was called to the pendency of the original proceedings in the state court. We thereupon deferred consideration of the same in deference to action by the State Supreme Court. That Court did assume jurisdiction of the first cause of action, but reserved its ruling "as to whether jurisdiction of the remaining causes of action pleaded by the applicants will be assumed." The Oklahoma Court has now determined that the initiative petition "failed of adoption for lack of sufficiency of affirmative votes." Allen, et al. v. Burkhart, et al. (Okla.), decided Dec. 22, 1962. That decision is of course binding here. Thereafter the intervenors amended their petition in the Supreme Court of Oklahoma to reassert the same matters and issues originally pleaded here, and on which the Oklahoma Supreme Court had reserved jurisdiction.

As the litigation now stands, the intervenors are in courts of two sovereign jurisdictions, alleging substantially the same subject matter and seeking substantially the same relief. The gloss of the pleadings may be somewhat different, but the subject matter of the lawsuits and the relief sought are essentially the same. The jurisdiction of both courts may be conceded, as indeed it is. The decisive point of consideration is that early in the course of this litigation, the intervenors invoked this court's jurisdiction and consented to its processes. They now seek to circumvent or frustrate that jurisdiction by provoking unseemly state-federal conflict over the same subject matter. In substance, they would remove a case into which they have intervened to another forum. In this posture, it seems important to sensitive areas of this kind that the Court having first acquired jurisdiction of the subject matter should proceed to a final determination of the tedious questions involved. Any attempted division or dual exercise of the concurrent jurisdiction can lead only to unwarranted confusion, and ought to be avoided. We think that the proper administration of justice and the maintenance of a harmonious state-federal relationship require us to restrain the intervenors from taking their lawsuit elsewhere.

APPENDIX II.

(a) Article V, Sections 1-4, incl., Constitution of Oklahoma (Volume I, pp. 62-63, Oklahoma Statutes 1961).

§ 1. Legislature—Authority and composition—Powers reserved to people

The Legislative authority of the State shall be vested in a Legislature, consisting of a Senate and a House of Representatives; but the people reserve to themselves the power to propose laws and amendments to the Constitution

and to enact or reject the same at the polls independent of the Legislature, and also reserve power at their own option to approve or reject at the polls any act of the Legislature.

§ 2. Designation and definition of reserved powers—Determination of percentages

The first power reserved by the people is the initiative, and eight per centum of the legal voters shall have the right to propose any legislative measure, and fifteen per centum of the legal voters shall have the right to propose amendments to the Constitution by petition and every such petition shall include the full text of the measure so proposed. The second power is the referendum and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health, or safety), either by petition signed by five per centum of the legal voters or by the Legislature as other bills are enacted. The ratio and per centum of legal voters hereinbefore stated shall be based upon the total number of votes cast at the last general election for the State office receiving the highest number of votes at such election.

§ 3. Petitions—Veto power—Elections—Time of taking effect—Style of bills—Duty of legislature

Referendum petitions shall be filed with the Secretary of State not more than ninety days after the final adjournment of the session of the Legislature which passed the bill on which the referendum is demanded. The veto power of the Governor shall not extend to measures voted on by the people. All elections on measures referred to the people of the State shall be had at the next election held throughout the State, except when the Legislature or the Governor shall order a special election for the express purpose of making such reference. Any measure referred to the people by the initiative shall take effect and be in force when it shall have been approved by a majority of the votes cast

in such election. Any measure referred to the people by the referendum shall take effect and be in force when it shall have been approved by a majority of the votes cast thereon and not otherwise.

The style of all bills shall be: "Be it Enacted By the People of the State of Oklahoma."

Petitions and orders for the initiative and for the referendum shall be filed with the Secretary of State and addressed to the Governor of the State, who shall submit the same to the people. The Legislature shall make suitable provisions for carrying into effect the provisions of this article.

§ 4. Referendum against part of act

The referendum may be demanded by the people against one or more items, sections, or parts of any act of the Legislature in the same manner in which such power may be exercised against a complete act. The filing of a referendum petition against one or more items, sections, or parts of an act shall not delay the remainder of such act from becoming operative.

(b) Article XXIV, Sections 1 and 3, Constitution of Oklahoma (Volume I, p. 137, Oklahoma Statutes 1961).

§ 1. Amendments proposed by Legislature—Submission to vote

Any amendment or amendments to this Constitution may be proposed in either branch of the Legislature, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered in their journals and referred by the Secretary of State to the people for their approval or rejection, at the next regular general election, except when the Legislature, by a two-thirds vote of each house, shall order a special election for that purpose. If a majority of

all the electors voting at such election shall vote in favor of any amendment thereto, it shall thereby become a part of this Constitution.

If two or more amendments are proposed they shall be submitted in such manner that electors may vote for or against them separately.

No proposal for the amendment or alteration of this Constitution which is submitted to the voters shall embrace more than one general subject and the voters shall vote separately for or against each proposal submitted; provided, however, that in the submission of proposals for the amendment of this Constitution by articles, which embrace one general subject, each proposed article shall be deemed a single proposal or proposition. As amended State Question No. 353, Referendum Petition No. 100. Adopted primary election July 1, 1952.

§ 3. Right of amendment by initiative petition not impaired

This article shall not impair the right of the people to amend this Constitution by a vote upon an initiative petition therefor.

Article 5, Section 30, Oklahoma Constitution:

"Judges of election of members—Quorum—Rules—Disorderly behavior—Journal.

"Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalty as each House may provide.

"Each House may determine the rules of its proceedings, punish its members for disorderly behavior,

and, with the concurrence of two-thirds, expel a member.

"Each House shall keep a journal of its proceedings, and from time to time publish the same. The yeas and nays of the members of either House on any question, at the desire of one-fifteenth of those present shall be entered upon its journal.

"Neither House, during the session of the Legislature, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting."

Article V, Sections 9, 9a, 9b and 10, Constitution of Oklahoma (Volume 1, pp. 64-65, Oklahoma Statutes 1961).

§ 9. Membership and term of office

The Senate, except as hereinafter provided, shall consist of not more than forty-four members, whose term of office shall be four years: Provided, That one senator elected at the first election from each even numbered district shall hold office until the fifteenth day succeeding the regular state election in Nineteen Hundred and Eight, and one elected from each odd numbered district at said first election shall hold office until the fifteenth day succeeding the day of the regular state election in Nineteen Hundred and Ten: And Provided further, That in districts electing two senators, the two elected at the first election shall cast lots in such manner as the Legislature may prescribe to determine which shall hold the long and which the short term.

§ 9(a). Senatorial districts—Additional senators

At the time each senatorial apportionment is made after the year Nineteen hundred and Ten the State shall be divided into forty-four districts to be called senatorial districts, each of which shall elect one senator; and the Senate shall always be composed of forty-four senators, except that in event any county shall be entitled to three

or more senators at the time of any apportionment such additional senator or senators shall be given such county in addition to the forty-four senators and the whole number to that extent. Said districts shall be numbered from One to Forty-four inclusive, and each of said districts shall contain as near as may be an equal number of inhabitants, such population to be ascertained by the next preceding Federal census, or in such manner as the Legislature may direct, and shall be in as compact form as practicable and shall remain unaltered until the next decennial period, and shall at all times consist of contiguous territory.

§ 9(b). Division of counties, towns and wards—Equality of population

No county shall ever be divided in the formation of a Senatorial district except to make two or more senatorial districts wholly in such county. No town, and no ward in a city, when constituting only one voting precinct, shall be divided in the formation of a senatorial district, nor shall any senatorial district contain a greater excess in population over an adjoining district in the same county than the population of a town, or ward in a city, constituting only one voting precinct therein, adjoining such district. Towns, and wards in cities, constituting only one voting precinct, which may, from their location, be included in either of two senatorial districts, shall be so placed as to make such districts most nearly equal in number of inhabitants.

§ 10. Number and terms—Meeting of first legislature—Apportionment—Review of apportionment

The House of Representatives, until otherwise provided by law, shall consist of not more than one hundred and nine members who shall hold office for two years: Provided, That the representatives elected at the first election shall hold office until the fifteenth day succeeding the day of the regular state election in Nineteen Hundred and Eight: And Provided, That the day on which state elections shall be held shall be fixed by the Legislature.

(a) The first Legislature shall meet at the seat of government upon proclamation of the Governor on the day named in said proclamation, which shall not be more than thirty days nor less than fifteen days after the admission of the State into the Union.

(b) The apportionment of this State for members of the Legislature shall be made at the first session of the Legislature after each decennial Federal census.

(c) The whole population of the State as ascertained by the Federal census, or in such manner as the Legislature may direct, shall be divided by the number one hundred and the quotient shall be the ratio of representation in the House of Representatives for the next ten years succeeding such apportionment.

(d) Every county having a population equal to one-half of said ratio shall be entitled to one representative; every county containing said ratio and three-fourths over shall be entitled to two representatives, and so on, requiring after the first two an entire ratio for each additional representative: Provided, That no county shall ever take part in the election of more than seven representatives.

(e) When any county shall have a fraction above the ratio so large that being multiplied by five the result will be equal to one or more ratios, additional representatives shall be apportioned for such ratio among the several sessions of the decennial period. If there are two ratios, representatives shall be allotted to the fourth and third sessions, respectively; if three, the third, second, and first sessions, respectively; if four, to the fourth, third, second, and first sessions, respectively.

(f) Any county forming with another county or counties a representative district during one decennial period, if it has acquired sufficient population, at a fixed decennial

period, shall be entitled to an additional representative, if there shall be left in the district from which it shall have been separated a population sufficient for a representative. No such change shall be made except at the regular decennial period for the apportionment of representatives.

(g) If in fixing any decennial ratio, a county previously a separate representative district shall have less than the number required by the ratio for a representative, such county shall be attached to a county adjoining it and become a part of such representative district.

(h) No county shall ever be divided in the formation of representative districts except to make two or more representative districts in such county. No town, or ward in a city, where it constitutes only one voting precinct, shall be divided in the formation of representative districts, nor shall any representative district contain a greater excess in population over an adjoining district in the same county than the population of a town or ward in a city, constituting only one voting precinct adjoining such district. Counties, towns, or wards in cities, constituting only one voting precinct, which, from location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants.

(i) Ascertaining the ratio of representation according to the Federal census, or such other enumeration as the Legislature may provide, and attaching any county, previously having a separate representative but found to have less than the number required by the ratio, to an adjoining county; and determining the number of representatives each county or district shall be entitled to, and for what sessions of the Legislature within the next decennial period; and apportioning the Senators, shall be done by the Legislature and be presented to the Governor for his approval in the same manner as other bills which may be passed by the Legislature.

(j) An apportionment by the Legislature shall be subject to review by the Supreme Court at the suit of any citizen, under such rules and regulations as the Legislature may prescribe. And such court shall give all cases involving apportionment precedence over all other cases and proceedings; and if said court be not in session, it shall convene promptly for the disposal of the same.

(a) Article V, Section 11, Constitution of Oklahoma. (Volume I, pp. 65-66, Oklahoma Statutes 1961).

§ 11. Senatorial districts—Composition and number of senators

Until the apportionment is made by the Legislature after the next Federal decennial census, the State, except as otherwise provided, shall be divided into thirty-three senatorial districts, each of which shall be composed of the counties as named, shall be numbered and elect senators as follows, namely:

First, Beaver, Cimarron, Harper, and Texas, one senator; Second, Beckham, Dewey, Ellis, and Roger Mills, two senators; Third, Woods and Woodward, one senator; Fourth, Greer, one senator; Fifth, Jackson and Tillman, one senator; Six, Custer, Kiowa, and Washita, two senators; Seventh, Alfalfa and Major, one senator; Eighth, Garfield, one senator; Ninth, Osage, Grant, and Kay, two senators; Tenth, Noble and Pawnee, one senator; Eleventh, Creek and Payne, one senator; Twelfth, Logan, one senator; Thirteenth, Lincoln and Pottawatomie, two senators; Fourteenth, Canadian and Oklahoma, two senators; Fifteenth, Caddo and Grady, two senators; Sixteenth, Blaine and Kingfisher, one senator; Seventeenth, Comanche, Jefferson, Stephens, two senators; Eighteenth, Carter, Love, and Murray, two senators; Nineteenth, Cleveland, Garvin, and McClain, two senators; Twentieth, Atoka, Bryan, and Coal, two senators; Twenty-first, Latimer and Le Flore, one senator; Twenty-second, Hughes and Okfuskee, one senator; Twenty-third,

Pontotoc and Seminole, one senator; Twenty-fourth, Choctaw, McCurtain, and Pushmataha, one senator; Twenty-fifth, Pittsburg, one senator; Twenty-sixth, Marshall and Johnson, one senator; Twenty-seventh, Haskell, McIntosh, and Muskogee, two senators; Twenty-eighth, Adair and Sequoyah, one senator; Twenty-ninth, Mayes and Craig, one senator; Thirtieth, Ottawa, Delaware, and Cherokee, one senator; Thirty-first, Tulsa and Washington, one senator; Thirty-second, Okmulgee and Wagoner, one senator; Thirty-third, Nowata and Rogers, one senator.

(b) Title 14, Sections 9-72, incl., Oklahoma Statutes 1961. (Volume I, pp. 1042-1046, incl., Oklahoma Statutes 1961).

§ 9. Nominating districts—Nominations—Voting

The Second Senatorial District of the State of Oklahoma, as now constituted by law, shall be divided into two nominating districts; Roger Mills, Ellis and Dewey Counties shall constitute one nominating district and shall nominate a candidate for the State Senate in the primary election of 1942, and each four years thereafter; Beckham County shall constitute a nominating district and shall nominate a candidate for the State Senate in said district at the primary election of 1944, and each four years thereafter; and the candidates so nominated in said districts shall be voted for at the general election following such nomination by all the qualified electors in said Second Senatorial District.

§ 10. Sixth district—Nominating districts

The Sixth Senatorial District of the State of Oklahoma, as now constituted by law, shall be divided into two (2) nominating districts: Washita and Kiowa Counties shall constitute one (1) nominating district and shall nominate a candiate for the State Senate at the primary election of 1942, and each four (4) years thereafter; Custer County

shall constitute a nominating district and shall nominate a canididate for the State Senate in said District at the primary election of 1944, and each four (4) years thereafter; and the candidates so nominated in said Districts shall be voted for at the general election following such nomination by all of the qualified electors in said Senatorial District.

§ 11. Ninth and thirty-first districts

From and after the passage of this Act, the Ninth Senatorial District of the State of Oklahoma shall be comprised of the Counties of Grant and Kay; the Thirty-first Senatorial District shall be comprised of the County of Tulsa.

§ 12. Thirty-fourth district

There is hereby created a Senatorial District to be numbered and known as the Thirty-fourth Senatorial District which shall be comprised of the territory embraced within the Counties of Osage and Washington.

§ 13. Number of senators

Hereafter each of said Senatorial Districts shall be represented by one Senator.

§ 14. Election of senators

At the election held in 1920, and each four years thereafter, there shall be elected one Senator from Senatorial District Number Thirty-four; provided, the Senator representing the Ninth Senatorial District, who is a resident of the territory embraced within the Thirty-fourth Senatorial District, shall represent the Thirty-fourth Senatorial District in the State Senate until a successor shall be elected, as hereinabove provided. Provided further, that at the election held in 1922, and every four years thereafter, there shall be elected one Senator each from Senatorial Districts Number Nine and Number Thirty-one.

§ 21. Thirteenth district—Nominating districts

The Thirteenth Senatorial District shall be divided into two nominating districts, Lincoln County constituting one nominating district, and Pottawatomie County shall constitute one nominating district; and the qualified electors of said nominating districts, as herein created, shall each nominate a candidate for State Senator in said district, as provided by law; and the candidates so nominated to be voted for at the general election, by all the qualified electors of said district.

§ 22. Fifteenth District—Nominating districts

The fifteenth Senatorial District shall be divided into two nominating districts; Grady County constituting one nominating district, and Caddo County shall constitute one nominating district, and the qualified electors of said nominating districts, as herein created, shall each nominate a candidate for State Senator in said district, as provided by law; and the candidates so nominated, to be voted for at the general election by all qualified electors of said district.

§ 31. Nominating districts

The Fourteenth Senatorial district shall be divided into two nominating districts, Canadian County constituting one nominating district, and Oklahoma County constituting another nominating district; and the qualified electors of said respective nominating districts as herein created shall each nominate a candidate for State Senator in said district as provided by law; and the candidate so nominated to be voted for at the general election by all the qualified electors of the said fourteenth Senatorial district.

§ 32. Nominations—Primary elections—District election—Additional senator

From each of said nominating districts candidates for State Senator of the State of Oklahoma, shall be nominated by political parties, or by petitioners of the respective dis-

tricts, in the manner provided by law, and such candidates shall be voted for in the primary election to be held as provided by law in each of the nominating districts, and after being nominated as herein provided, and as provided by law, the qualified voters and electors of the Senatorial district at large shall vote on all nominations so made; and no electors at such election shall vote for more than one candidate from each district at said election, unless there shall be added additional and further senators to said district other than those now provided for, and if a further or additional senator shall be provided so as to make three in said Senatorial district, then one of said senators shall be nominated from Canadian County, and the remaining senator or senators shall be nominated from Oklahoma County, and all of the senators thus nominated shall be elected as provided by law.

§ 33. Time for nominations and elections—Intention of act—Number and residence

Canadian County in the nominating district in this act created, shall nominate in said nominating district, one State senator, to be elected in said district at the August primary as provided by law in the year 1918 and such senator so nominated at said primary shall be voted for at the November election in the year 1918, and each four years thereafter. The senator or senators provided by law in said district, other than the one provided for as to Canadian County, shall be nominated at the August primary 1920, and elected at the November election, 1920, and every four years thereafter.

It being the intention of the provisions of this act to give to Canadian County one nominating district for one State senator in said district, and Oklahoma County one nominating senatorial district for one State senator in said district, and Oklahoma County one nominating senatorial district for one or more senators as may be provided by law

in said district, provided always, that said district shall be entitled by law to two senators or more, and it further being the intention of this act that one senator shall be a resident of Canadian County and one senator shall be a resident of Oklahoma County, the county from which the nomination shall be respectively made.

§ 41. Nominating districts—Nominations—Election

The Seventeenth Senatorial District of the State of Oklahoma shall be divided into two nominating districts; Stephens County and Jefferson County constituting one nominating district, and Cotton County and Comanche County shall constitute one nominating district; and the qualified electors of said nominating districts, as herein created, shall each nominate a candidate for State Senator in said district, as provided by law; and the candidates so nominated shall be voted for at the general election, by all the qualified electors of said district.

§ 42. Nominations—Primary and district elections

From each of said nominating districts, candidates for State Senator of the State of Oklahoma, shall be nominated by political parties, or by petitioners of the representative districts, in the manner provided by law, and such candidates shall be voted for in the primary election to be held as provided by law in each of the nominating districts, and after being nominated as herein provided, and as provided by law, the qualified voters and electors of the Senatorial district at large shall vote on all nominations so made; and no electors at such election shall vote for more than one candidate from each district at said election.

§ 43. Time for nominations and elections

Stephens County and Jefferson County, in the nominating district in this Act created, shall nominate in said nominating district one State Senator, to be elected in said district at the August primary as provided by law in the

year 1926, and such Senator so nominated at said primary shall be voted for at the November election in the year 1926, and each four (4) years thereafter. The Senator provided by law in said district comprised of Cotton County and Comanche County shall be nominated at the August primary, 1928, and elected at the November election, 1928, and every four (4) years thereafter.

§ 45.1 Eighteenth and twenty-six districts—Counties constituting

From and after the effective date of this Act, the Eighteenth (18th) Senatorial District of the State of Oklahoma shall be comprised of Carter County; the Twenty-Sixth (26th) Senatorial District shall be comprised of the Counties of Love and Marshall.

§ 45.2 Thirty-sixth district created—Counties constituting

There is hereby created a Senatorial District to be numbered and known as the Thirty-Sixth (36) Senatorial District of the State of Oklahoma, which shall be comprised of the territory embraced within the Counties of Murray and Johnston.

§ 45.3 Each district represented by one senator

Hereafter each of said Senatorial Districts shall be represented by one (1) Senator.

§ 45.4 Time of election of senators

At the general election to be held in 1942, and each four (4) years thereafter, there shall be elected one (1) Senator from Senatorial District No. 36; that at the general election to be held in 1944, and each four (4) years thereafter, there shall be elected one (1) Senator from Senatorial District No. 18, and one (1) Senator from Senatorial District No. 26.

§ 51. Nominating districts—Nominations—Election

The Nineteenth Senatorial District of the State of Oklahoma, as now constituted by law, shall be divided into two Nominating Districts; Cleveland and McClain Counties shall constitute one Nominating District and shall nominate a candidate for the State Senate in the primary election of 1934, and each four years thereafter; Garvin County shall constitute a Nominating District and shall nominate a candidate for the State Senate in said District at the primary election of 1936, and each four years thereafter; and the candidates so nominated in the said districts shall be voted for at the general election following said nomination by all of the qualified electors in said Nineteenth Senatorial District.

§ 52. Twentieth and twenty-fourth districts

From and after the passage of this Act, the Twentieth Senatorial District of the State of Oklahoma shall be comprised of the counties of Bryan and Choctaw; the Twenty-fourth Senatorial District shall be comprised of the Counties of Pushmataha and McCurtain.

§ 53. Thirty-fifth district

There is hereby created a Senatorial District to be numbered and known as the Thirty-fifth Senatorial District, which shall be comprised of the territory embraced within the Counties of Coal and Atoka.

§ 54. Number of senators

Hereafter each of said Senatorial Districts shall be represented by one Senator.

§ 55. Election of senators

At the election held in 1938, and each four years thereafter, there shall be elected one Senator from Senatorial District Numbered Thirty-five; provided, the Senator representing the Twentieth Senatorial District, and whose office expires in 1938, shall represent the Thirty-fifth Senatorial

District in the State Senate until a successor shall be elected as hereinabove set forth; provided, further, that the Senator now representing the Twentieth District, who was elected at the election in 1936, and the Senator now representing the Twenty-fourth District, who is a resident of the territory embraced within said District, shall continue to represent said Senatorial Districts Numbered Twenty and Twenty-four, respectively, until 1940; provided, further, that at the election held in 1940, and every four years thereafter, there shall be elected one Senator from Senatorial Districts Number Twenty and Twenty-four.

§ 61. Nominating districts—Nominations—Election

The twenty-seventh senatorial district of the State of Oklahoma shall be divided into two nominating districts; Muskogee County constituting one nominating district and Haskell and McIntosh Counties shall constitute one nominating district, and the qualified electors of said nominating districts, herein created, shall each nominate a candidate for state senator in said district, as provided by law, and the candidate, so nominated, shall be voted for at the general election by all the qualified electors of said district.

§ 62. Nominations—Primary elections—District election

From each of said nominating districts, candidates for state senator of the State of Oklahoma shall be nominated by political parties or by petitioners of the representative district in the manner provided by law, and such candidates shall be voted for in the primary election to be held, as provided by law, in each nominating district, and after being nominated, as herein provided, and as provided by law, the qualified voters and electors and the senatorial district at large, shall vote on all nominations, so made, and no elector at such election shall vote for more than one candidate from each district at said election.

§ 63. Time for nominations and elections

Muskogee County, in the nominating district, in this Act created, shall nominate in said nominating district one state senator, to be nominated in said district at the August primary, as provided by law, in the year 1926, and such senator, so nominated, at the said primary, shall be voted for at the November election in the year 1926 and each four years thereafter. The senator, provided by law in said district, comprised of Haskell and McIntosh Counties shall be nominated at the August primary, 1928, and elected at the November election in 1928 and every four years thereafter.

§ 71. Twenty-eighth district—Counties comprising

From and after the passage of this Act the Twenty-eighth Senatorial District of the State of Oklahoma shall be comprised of Adair, Cherokee and Sequoyah Counties.

§ 72. Thirtieth district—Counties comprising

From and after the passage of this Act the Thirtieth Senatorial District of the State of Oklahoma shall be comprised of Ottawa and Delaware Counties.

Title 14, Sections 97-100, incl., Oklahoma Statutes 1961 (Volume I, pp. 1047-1051, incl., Oklahoma Statutes 1961).

§ 97. Decennial legislative period—Biennial legislative period or sessions—Election of representatives

The ten-year period beginning the 16th day after the general election in November, 1962, and ending the 15th day after the general election in November, 1972, shall constitute a Decennial Legislative Period, unless otherwise provided by law. And the period is hereby divided into five legislative periods or sessions of two years each with the number of representatives assigned to each county for

each of the legislative periods to be those shown in Section 3 of this Act.

Representatives assigned to each county for each of the five legislative periods shall be elected at the general election in the month of November next preceding the commencement of the respective legislative period.

Unless otherwise provided by law the representatives assigned to each county for each legislative period shall be nominated and elected at large by the electors of the respective counties.

§ 98. Legislative periods

Legislative periods provided for in Section 1 of this Act shall cover these periods:

(a) The first legislative period shall begin on the 16th day after the general election in November, 1962, and end with the 15th day after the general election in November, 1964.

(b) The second legislative period shall begin on the 16th day after the general election in November, 1964, and end with the 15th day after the general election in November, 1966.

(c) The third legislative period shall begin on the 16th day after the general election in November, 1966, and end with the 15th day after the general election in November, 1968.

(d) The fourth legislative period shall begin on the 16th day after the general election in November, 1968, and end with the 15th day after the general election in November, 1970.

(e) The fifth legislative period shall begin on the 16th day after the general election in November, 1970, and

end with the 15th day after the general election in November, 1972.

§ 99. Representation of each county in each period

Until another apportionment of the House of Representatives shall be made in accordance with the terms of the Constitution and laws of Oklahoma, the House of Representatives shall be composed of the representation listed in the table below, and this representation shall be the legislative apportionment of the House of Representatives for each of the five periods, as established in Section 2 of this Act.

The legislative apportionment by legislative periods are hereby fixed as follows, subject, however, to such change as may be required by operation of Section 6 of this Act.

COUNTIES	FIRST PERIOD	SECOND PERIOD	THIRD PERIOD	FOURTH PERIOD	FIFTH PERIOD
Adair	1	1	1	1	1
Alfalfa	1	1	1	1	1
Atoka	1	1	1	1	1
Beaver	1	1	1	1	1
Beckham	1	1	1	1	1
Blaine	1	1	1	1	1
Bryan	2	2	2	2	2
Caddo	2	2	2	2	2
Canadian	2	2	2	2	2
Carter	2	2	2	2	2
Cherokee	1	1	1	1	1
Choctaw	1	1	1	1	1
Cimarron	1	1	1	1	1
Cleveland	3	3	3	3	3
Coal	1	1	1	1	1
Comanche	4	4	4	4	4
Cotton	1	1	1	1	1
Craig	1	1	1	1	1

Creek	2	2	2	2	2
Custer	1	1	1	1	1
Delaware	1	1	1	1	1
Dewey	1	1	1	1	1
Ellis	1	1	1	1	1
Garfield	3	3	3	3	3
Garvin	2	2	2	2	2
Grady	2	2	2	2	2
Grant	1	1	1	1	1
Greer	1	1	1	1	1
Harmon	1	1	1	1	1
Harper	1	1	1	1	1
Haskell	1	1	1	1	1
Hughes	1	1	1	1	1
Jackson	2	2	2	2	2
Jefferson	1	1	1	1	1
Johnston	1	1	1	1	1
Kay	3	3	3	3	3
Kingfisher	1	1	1	1	1
Kiowa	1	1	1	1	1
Latimer	1	1	1	1	1
Le Flore	2	2	2	2	2
Lincoln	1	1	1	1	1
Logan	1	1	1	1	1
Love	1	1	1	1	1
McClain	1	1	1	1	1
McCurtain	2	2	2	2	2
McIntosh	1	1	1	1	1
Major	1	1	1	1	1
Marshall	1	1	1	1	1
Mayes	1	1	1	1	1
Murray	1	1	1	1	1
Muskogee	3	3	3	3	3
Noble	1	1	1	1	1
Nowata	1	1	1	1	1
Okfuskee	1	1	1	1	1

Oklahoma	7	7	7	7	7
Okmulgee	2	2	2	2	2
Osage	2	2	2	2	2
Ottawa	2	2	2	2	2
Pawnee	1	1	1	1	1
Payne	2	2	2	2	2
Pittsburg	2	2	2	2	2
Pontotoc	2	2	2	2	2
Pottawatomie	2	2	2	2	2
Pushmataha	1	1	1	1	1
Roger Mills	1	1	1	1	1
Rogers	1	1	1	1	1
Seminole	2	2	2	2	2
Sequoyah	1	1	1	1	1
Stephens	2	2	2	2	2
Texas	1	1	1	1	1
Tillman	1	1	1	1	1
Tulsa	7	7	7	7	7
Wagoner	1	1	1	1	1
Washington	2	2	2	2	2
Washita	1	1	1	1	1
Woods	1	1	1	1	1
Woodward	1	1	1	1	1
Total	120	120	120	120	120

§ 100. Division of certain counties into legislative districts

(a) Oklahoma County shall be divided into seven (7) legislative districts as follows:

(1) Legislative District No. 1, Oklahoma County, shall contain the following described territory. Beginning at the intersection of May Avenue and Reno Street and extending along the center line of Reno Street to the center line of High Avenue; thence south to the center line of Southeast 15th Street, Oklahoma City; thence west to the center

line of Western Avenue; thence south along the center line of Western Avenue to the center line of Southwest 29th Street, Oklahoma City; thence west to the center line of Pennsylvania Avenue; thence south to the center line of Grand Boulevard; thence west to the western boundary of Section 18, Township 11 North, Range 3 West; thence south of said boundary to the Cleveland County line; thence west to the intersection of the Oklahoma County County line; thence north along the western boundary of Oklahoma County to the northwest corner of Deer Creek Township; thence east along the northern boundary of Oklahoma County to the intersection thereof with the Edmond Township; thence south along the western boundary of Range 3 West to the corporate limits of Oklahoma City; thence south on the center line of May Avenue to the center line of Reno Street and point of beginning.

(2) Legislative District No. 2, Oklahoma County, shall contain the following described territory: Beginning at the intersection of High and Reno Streets in Oklahoma City and extending north on the center line of High Avenue, or western boundary line of Section 35, Township 12 North, Range 3 West, to the intersection of Northeast 10th Street; thence east on the center line of Northeast 10th Street and Alice Street to the corporate limits of Oklahoma City; thence east on the southern boundary line of Section 25, Township 12 North, Range 3 West, to the western boundary of Crutcho Township; thence east to the county line; thence south to the county line; thence west to the intersection of county line with the western boundary of Section 31, Township 11 North, Range 3 West; thence north along said line to the corporate limits of Oklahoma City or Grand Boulevard; thence east on center line of Grand Boulevard to Pennsylvania Avenue, Oklahoma City; thence north along center line of Pennsylvania Avenue to the center line of

Southwest 29th Street, thence east to the center line of Western Avenue; thence north to the center line of Southwest 15th Street; thence east to the center line of High Avenue or point of beginning.

(3) Legislative District No. 3, Oklahoma County, shall contain the following described territory: Beginning at the intersection of Pennsylvania Avenue and Northwest 36th Street, and extending east along the center line of Northwest 36th Street to the center line of Western Avenue; thence south along the center line of Western Avenue to the center line of Northwest 23rd Street; thence east along the center line of 23rd Street to the center line of Harvey Avenue; thence south along the center line of Harvey Avenue to the center line of Northwest 10th Street; thence west along the center line of Northwest 10th Street to the center line of Pennsylvania Avenue and thence north along said center line to Northwest 36th Street, or place of beginning.

(4) Legislative District No. 4, Oklahoma County, shall contain the following described territory: Beginning at the intersection of North Harvey Avenue and Northwest 23rd Street in Oklahoma City, and extending east along the center line of Northwest 23rd and Northeast 23rd Streets to Kelley Avenue; thence north along the center line on Kelley Avenue to its intersection with Northeast 50th Street; thence east along the center line of Northeast 50th Street to the western boundary of Crutcho Township; thence south along the western boundary of Crutcho Township to the center of Northeast 10th Street; thence west along the center line of Northeast 10th Street and Northwest 10th Street to the center line of North Harvey Avenue; thence north along the center line of North Harvey Avenue to the point of beginning.

(5) Legislative District No. 5, Oklahoma County, shall contain the following described territory: Beginning at the

intersection of May Avenue, and Northwest 10th Street, and extending east along the center line of Northwest 10th Street and Northeast 10th Street to the center line of Kelley Avenue; thence south along the center line of Kelley Avenue and High Street to the center line of Reno Avenue; thence west along the center line of Reno Avenue to the center line of May Avenue; thence north along the center line of May Avenue, to the center line of Northwest 10th Street or place of beginning.

(6) Legislative District No. 6, Oklahoma County, shall contain the following described territory: Beginning at the intersection of Northwest 23rd Street and Western Avenue; thence east along the center line of Northwest 23rd Street and Northeast 23rd Street to Kelley Avenue; thence north along the center line of Kelley Avenue to the intersection of Northeast 50th Street; thence east along the center line of Northeast 50th Street to the western boundary of Crutcho Township; thence south along the western boundary of Crutcho Township to its intersection with Northeast 10th Street; thence east along the center line of Northeast 10th Street extended to the Pottawatomie County line; thence north along the eastern boundary to Elk, Dewey and Luther Townships to the Logan County line; thence west along said line and the north line of Luther, Deepfork and Lincoln Townships to the Edmond Township line; thence south along the western boundary of Lincoln and Hartzell Townships to the Oklahoma Township line; thence west along said Township line to the center of North Western Avenue; thence south along the center line of North Western Avenue to the intersection of same with Northwest 23rd Street or the point of beginning.

(7) Legislative District No. 7, Oklahoma County, shall contain the following described territory: Beginning at the intersection of May Avenue and Northwest 10th Street and extending east along the center line of Northwest 10th

Street to the center line of Pennsylvania Avenue; thence north along the center line of Pennsylvania Avenue to the center line of Northwest 36th Street; thence east along the center line of Northwest 36th Street to the center line of Western Avenue; thence north along the center line of North Western Avenue to the corporate limits of Oklahoma City; thence north along the western boundary of Sections 9 and 4, Township 12 North, Range 3 West to the Britton Township line; thence east along the Britton Township line to the western boundary of Hartzell Township; thence north along the western boundary of Hartzell and Lincoln Township to the Logan County line; thence west six miles to the western boundary of Edmond Township; thence south along the western boundary of Edmond, Britton and Oklahoma Townships to the corporate limits of Oklahoma City; thence south to the center line of May Avenue, to the intersection of Northwest 10th Street or point of beginning.

(b) Garfield County shall be divided into three (3) legislative districts as follows:

(1) Legislative District No. 1 and Legislative District No. 2 shall consist of the City of Enid. Candidates in these districts shall be residents of such districts and shall be nominated in primary elections by the electors of these districts and elected in the general elections by the electors of these districts.

(2) Legislative District No. 3 shall consist of all of Garfield County not embraced in District No. 1 and District No. 2. Candidates in this district shall be residents of this district and shall be nominated and elected by the electors of the district.

(c) Creek County shall be divided into two (2) legislative districts as follows:

(1) Legislative District No. 1 shall include the City of Sapulpa, the Town of Kiefer, and the following townships: Mannford, Hazlip, Sapulpa, Kellyville, and Mounds.

(2) Legislative District No. 2 shall include the cities of Drumright and Bristow and the following townships: Tiger, Olive, Shannon, Depew, Bristow, Sunnyslope, Lakeside, Newby, and Euchee.

Candidates in these districts shall be electors of such districts and shall be nominated in primary elections by the electors of these districts and elected in the general elections by the electors of the county at large.

(d) Le Flore County shall be divided into two (2) legislative districts as follows:

(1) Legislative District No. 1 shall include the following election precincts as now established or as may hereafter be changed or altered:

Cowlington Pct. No. 1, Tucker Pct. No. 2, Spiro Pct. No. 1, Spiro Pct. No. 2, Spiro Pct. No. 3, Braden Pct. No. 1, Skulleyville Pct. No. 2, Pocola Pct. No. 1, Arkoma Pct. No. 2, Bokoshe Pct. No. 1, Bokoshe Pct. No. 2, Bokoshe Pct. No. 3, Milton Pct., Cameron Pct. No. 1, Williams Pct. No. 2, Rock Island Pct. No. 3, Tahoma Pct. No. 4, Shady Point Pct. No. 1, Panama Pct. No. 2, Hill Pct. No. 1, Gilmore Pct. No. 2, Monroe Pct., Tarby Pct. No. 2, Fairview Pct. No. 3, Calhoun Pct. No. 1, Walls Pct. No. 2, Wister Pct. No. 1, Fanshawe Pct. No. 2, Kennedy Pct. No. 3.

(2) Legislative District No. 2 shall include the following election precincts as now established or as may hereafter be changed or altered:

Poteau City Ward No. 1, Poteau City Ward No. 2, Poteau City Ward No. 3, Poteau City Ward No. 4, Howe Pct. No. 1, Howe Pct. No. 2, Glendale, Howe Pct. No. 3, Oakridge Pct. No. 4, Heavener City Ward No. 1, Heavener

City Ward No. 2, Heavener City Ward No. 3, Heavener City Ward No. 4, Summerfield Pct. No. 1, Le Flore Pct. No. 2, Heavener Twp. Pct. No. 2, Reichert Pct. No. 3, Norman Pct. No. 4, Independence Pct. No. 5, Conser Pct. No. 1, Hodgen Pct. No. 2, Hontubby Pct. No. 3, Stapp Pct. No. 4, Page Pct. No. 1, Haw Creek Pct. No. 2, Muse Pct. No. 1, Big Cedar Pct. No. 2, Octavia Pct. No. 1, Cusher Pct. No. 2, Burkhart Pct. No. 3, Talihina Pct. No. 1, Forest Grove Pct. No. 2, Whitesboro Pct. No. 3, Forrester Pct. No. 6, Forrest Hill Pct. No. 7, Midway Pct. (Monroe Twp.).

(3) In order to file as a candidate in either district the candidate must have lived the six (6) months immediately preceding filing date in said district, and the candidates so filing shall be voted on in primary elections by the electors of their particular district, and shall be voted on in the general election by the electors of the county at large.

(c) Payne County shall be divided into two (2) legislative districts as follows:

(1) Legislative District No. 1 shall include the following townships as in existence at the time of the effective date of this Act: Rose, Pawnee, Cimarron, Mound, Eagle, Union, Indian, Clayton, Henry, and Glencoe.

(2) Legislative District No. 2 shall include all of Payne County not embraced in Legislative District No. 1, as created by this Act.

(3) Candidates in these districts shall be electors of such districts and shall be nominated in the primary elections by the electors of the respective district and elected in the general elections by the electors in the respective legislative district.

(f) Seminole County shall be divided into two (2) legislative districts as follows:

(1) Legislative District No. 1 shall be composed of the following townships: Red Mound, Brown, Miller, Lincoln, and Konawa.

(2) Legislative District No. 2 shall be composed of the following townships: Econtuchka and Wolf.

(3) Candidates in these districts shall be electors of such districts and shall be nominated in the primary elections by the electors of the respective district and elected in the general elections by the electors in the respective legislative district.

APPENDIX III.

LEGISLATIVE APPORTIONMENT—HOUSE OF REPRESENTATIVES

CHAPTER 11 [2]

An Act relating to legislative apportionment of the House of Representatives under the provisions of section 10, article 5 of the Constitution of Oklahoma; prescribing a decennial legislative period beginning the sixteenth day after the general election in November, 1962, and ending the fifteenth day after the general election in November 1972; dividing the decennial period into five legislative periods of two years each; establishing representative districts and the boundaries thereof; designating the number of representatives for each legislative period during the decennial legislative period; repealing conflicting laws; and making provisions severable.

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[2] 14 O.S. 1961 §§ 102-106.

Be it enacted by the People of the State of Oklahoma:

Section 1. Decennial legislative period—Biennial legislative periods or sessions—Elections

The ten-year period beginning the 16th day after the general election in November, 1962, and ending the 15th day after the general election in November, 1972, shall constitute a Decennial Legislative Period, unless otherwise provided by law. And the Period is hereby divided into five Legislative Periods or sessions of two years each with the number of representatives assigned to each county or multi-counties for each of the Legislative Periods, except the first Period, to be those shown in Section 3 of this Act. Representatives for the first Period shall be those provided by law.

Representative post or posts assigned to each county or multi-counties for the respective Legislative Period shall be filed by nominees elected at the general election in the month of November next preceding the commencement of the respective Legislative Period.

And, unless otherwise provided by law, the representative or representatives assigned for each county or multi-counties for the respective Legislative Period shall be nominated and elected at large by the electors of the respective county or counties.

Section 2. Legislative periods

Legislative Periods provided for in Section 1 of this Act shall cover these periods:

(a) The first Legislative Period shall begin on the 16th day after the general election in November, 1962, and end with the 15th day after the general election in 1964.

(b) The second Legislative Period shall begin on the 16th day after the general election in November, 1964, and

end with the 15th day after the general election in November, 1966.

(c) The third Legislative Period shall begin on the 16th day after the general election in November, 1966, and end with the 15th day after the general election in November, 1968.

(d) The fourth Legislative Period shall begin on the 16th day after the general election in November, 1968, and end with the 15th day after the general election in November, 1970.

(e) The fifth Legislative Period shall begin on the 16th day after the general election in November, 1970, and end with the 15th day after the general election in November, 1972.

Section 3. Representation of each county in each period

Until another apportionment of the House of Representatives shall be made in accordance with the provisions of the Constitution and laws of Oklahoma, the House of Representatives shall be composed of the representation listed in the table hereinafter set forth. It is the legislative interpretation of the provisions of the Oklahoma Constitution relating to apportionment of representatives that since a county having a population of at least one-half ratio is entitled to one full time representative, then for each additional one-fifth of a full ratio, the county or combination of counties may have an additional representative for a legislative session during the decennial period. The name of each county and the names of attached counties, together with representation entitlements, are listed under columns designated for the second, third, fourth and fifth Legislative Periods. The apportionments:

COUNTIES	2ND LEG. PERIOD	3RD LEG. PERIOD	4TH LEG. PERIOD	5TH LEG. PERIOD
Alfalfa-Grant	2	1	1	1
Atoka-Pushmataha	2	1	1	1
Beaver-Harper	1	1	1	1
Cimarron-Texas	2	1	1	1
Coal-Hughes	2	1	1	1
Cotton-Jefferson	1	1	1	1
Craig-Nowata	2	2	1	1
Dewey-Ellis-Roger Mills	2	1	1	1
Greer-Harmon	1	1	1	1
Haskell-Latimer	2	1	1	1
Johnston-Murray	2	1	1	1
Kingfisher-Major	2	1	1	1
Love-Marshall	1	1	1	1
Noble-Pawnee	2	2	1	1
Adair	1	1	1	1
Beckham	2	1	1	1
Bryan	1	2	2	1
Blaine	1	1	1	1
Caddo	2	2	1	1
Canadian	1	2	2	1
Carter	2	2	2	1
Cherokee	1	1	1	1
Choctaw	1	1	1	1
Cleveland	3	2	2	2
Comanche	4	4	4	4
Creek	2	2	2	1
Custer	1	2	2	1
Delaware	1	1	1	1
Garfield	2	3	3	2
Garvin	2	2	1	1
Grady	2	2	1	1

Jackson	2	2	1	1
Kay	2	3	3	2
Kiowa	1	1	1	1
LeFlore	2	2	1	1
Lincoln	1	1	1	2
Logan	1	1	1	2
McClain	1	1	1	1
McCurtain	2	2	1	1
McIntosh	1	1	1	1
Mayes	1	1	1	2
Muskogee	3	3	3	2
Okfuskee	1	1	1	1
Oklahoma	7	7	7	7
Okmulgee	2	2	2	1
Osage	2	2	2	1
Ottawa	2	2	1	1
Payne	2	2	2	2
Pittsburg	2	2	2	1
Pontotoc	2	2	1	1
Pottawatomie	2	2	2	2
Rogers	1	1	1	2
Seminole	2	2	1	1
Sequoyah	1	1	1	2
Stephens	2	2	2	1
Tillman	1	1	1	1
Tulsa	7	7	7	7
Wagoner	1	1	1	1
Washington	2	2	2	2
Washita	1	1	1	2
Woods	1	1	1	1
Woodward	1	1	1	1
TOTALS	112	107	96	91

Provided however that when a legislative district contains two counties and said legislative district shall be entitled to two representatives, then each said county shall be a nominating district.

Section 4. Creek County—Division into two legislative districts

Creek County shall be divided into two (2) legislative districts as follows:

(1) Legislative District No. 1 shall include the City of Sapulpa, the Town of Kiefer, and the following townships. Mannford, Hazlip, Sapulpa, Kellyville and Mounds.

(2) Legislative District No. 2 shall include the cities of Drumright and Bristow and the following townships: Tiger, Olive, Shannon, Depew, Bristow, Sunnyslope, Lakeside, Newby and Euchee.

Section 5. Legislative districts

Any county eligible for and receiving an apportionment of two or more representatives for any of the Legislative Periods in the Decennial Legislative Period may have districts as provided by law. Counties without legislative districts shall nominate and elect Representatives from the county-at-large.

Section 6. Repealer

Title 14, O.S. 1961, Sections 97 through 99, 100(b), (c), (d), (e) and (f), and 101, and all parts of acts in conflict herewith are hereby repealed.

Section 7. Severability

The provisions of this Act are severable, and if any part or provision hereof shall be held void, the decision of the Court so holding shall not affect or impair any of the remaining parts or provisions of this Act.

Approved March 7, 1963.

APPENDIX IV.

RESOLUTIONS

LEGISLATIVE APPORTIONMENT—SENATE

S.J. Res. No. 8 [9]

A Joint Resolution relating to apportionment of the members of the Oklahoma State Senate; designating districts; and repealing conflicting laws.

WHEREAS, the people of Oklahoma by adoption of the Constitution of Oklahoma have provided for a method of determining membership in the State Legislature; and

WHEREAS, the Constitution of the State of Oklahoma specifies that the State shall be divided into districts for the election of State Senators and further states that such districts shall be based upon population as "ascertained by the next preceding Federal Census, or in such manner as the Legislature may direct"; and

WHEREAS, the quoted provision of the Constitution of the State of Oklahoma specifically authorizes a determination of districts in such manner as the Legislature may direct; and

WHEREAS, by other standards and guides written into the Constitution of the State of Oklahoma, it is apparent that the Legislature is authorized to consider other factors in addition to the number of persons within a district; and

WHEREAS, a census is not a true representation of the permanent population of an area because of the inclusion within such census of migratory, transient, and temporary residents; and

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[9] 14 O.S. 1961, §§ 78.1-78.11.

WHEREAS, the number of registered voters and the number of people actually voting in the last election, among other factors, should be taken into consideration in determining permanent population; and

WHEREAS, the Legislature should truly reflect a representation of the permanent citizens of an area in order to provide proper legislation for those affected; and

WHEREAS, twenty-two of the present State Senators were elected at the general election of 1962 for a term of four years, and the interests of the State of Oklahoma and its people will be best served by permitting each of such incumbent Senators to serve out the entire term for which he was elected.

Now, Therefore, be it resolved by the Senate and the House of Representatives of the Twenty-Ninth Legislature of the State of Oklahoma:

Section 1. Representation as based on permanent population

Under the authority of the Oklahoma Constitution, it is hereby declared that representation in the Oklahoma State Senate shall be based on the permanent population of the counties.

Section 2. Division of state into districts

The State of Oklahoma is hereby divided into forty-seven senatorial districts to be numbered and to include the territory within the counties hereafter indicated, and one State Senator shall be elected from each such district:

District Number	*Counties in Districts*
1	Cimarron, Texas, Beaver, Harper
2	Beckham, Harmon, Greer
3	Jackson, Tillman
4	Kiowa, Washita
5	Custer, Dewey, Roger Mills
6	Woods, Ellis, Woodward
7	Major, Grant, Alfalfa
8	Blaine, Canadian
9	Caddo
10	Comanche
11	Stephens
12	Grady
13	Kingfisher, Logan
14	Garfield
15	Kay
16	Payne
17	Oklahoma
18	Oklahoma
19	Oklahoma
20	Oklahoma
21	Cleveland
22	Garvin, McClain
23	Carter
24	Cotton, Jefferson, Love, Marshall
25	Murray, Johnston, Coal, Atoka
26	Pontotoc
27	Pottawatomie
28	Seminole, Hughes
29	Lincoln, Okfuskee
30	Creek
31	Osage, Noble, Pawnee
32	Washington
33	Tulsa
34	Tulsa

35	Tulsa
36	Okmulgee
37	Pittsburg
38	Bryan, Choctaw
39	Pushmataha, McCurtain
40	LeFlore
41	Haskell, Latimer, McIntosh
42	Muskogee
43	Sequoyah, Adair
44	Wagoner, Cherokee
45	Rogers, Nowata
46	Craig, Mayes
47	Ottawa, Delaware

Section 3. Districts 17, 18, 19 and 20—Area

Districts Nos. 17, 18, 19, and 20 shall be wholly within Oklahoma County, and shall respectively comprise the following described area:

Oklahoma County shall be divided into four senatorial districts as follows:

(a) District No. 17 shall comprise the following described area: Beginning at the intersection of North 10th Street and the center line of the Santa Fe Railroad in Oklahoma City, thence northerly along the center line of the Santa Fe Railroad to the northern Oklahoma County boundary, thence west to the western Oklahoma County boundary, thence south to the center line of North 10th Street, thence east to the center line of the Santa Fe Railroad, which is the point of beginning.

(b) District No. 18 shall comprise the following described area: Beginning at the intersection of North 10th Street and the center line of the Santa Fe Railroad in Oklahoma City, thence northerly along the center line of

the Santa Fe Railroad to the northern Oklahoma County boundary, thence east to the eastern Oklahoma County boundary, thence south to the center line of North 10th Street, thence west to the center line of the Santa Fe Railroad, which is the point of beginning.

(c) District No. 19 shall comprise the following described area: Beginning at the intersection of North 10th Street and the center line of the Santa Fe Railroad in Oklahoma City, thence southerly along the center line of the Santa Fe Railroad to the southern Oklahoma County boundary, thence west to the western Oklahoma County boundary, thence north to the center line of North 10th Street, thence east to the center line of the Santa Fe Railroad, which is the point of beginning.

(d) District No. 20 shall comprise the following described area: Beginning at the intersection of North 10th Street and the center line of the Santa Fe Railroad in Oklahoma City, thence southerly along the center line of the Santa Fe Railroad to the southern Oklahoma County boundary, thence east to the eastern Oklahoma County boundary, thence north to the center line of North 10th Street, thence west to the center line of the Santa Fe Railroad, which is the point of beginning.

Section 4. Districts 33, 34 and 35—Area

Districts Nos. 33, 34, and 35 shall be wholly within Tulsa County, and shall respectively comprise the following described area:

(a) District No. 33 shall comprise all that portion of Tulsa County lying north of a line described as: Beginning at a point where Fairview Street intersects the boundary line between Tulsa County and Osage County, thence east along the center line of Fairview Street to Main Street; thence south along the center line of Main Street to the

Frisco Railroad; thence northeasterly along the center line of the Frisco Railroad to Lewis Avenue; thence south along the center line of Lewis Avenue to 5th Street; thence east along the center line of 5th Street to Harvard Avenue; thence north along the center line of Harvard Avenue to 4th Place; thence east along the center line of 4th Place to Memorial Drive; thence north along the center line of Memorial Drive to Admiral Place; thence east on Admiral Place to 145th Street East; thence north along the center line of 145th Street East to a point where 145th Street East intersects the boundary line between Tulsa County and Rogers County, at the extreme southwest corner of Rogers County.

(b) District No. 34 shall comprise all of that portion of Tulsa County lying south and west of a line described as: Beginning at a point where Fairview Street intersects the boundary line between Tulsa County and Osage County, thence east along the center line of Fairview Street to Main Street; thence south along the center line of Main Street to the Frisco Railroad; thence northeasterly along the center line of the Frisco Railroad to Lewis Avenue; thence south along the center line of Lewis Avenue to 13th Street; thence west along the center line of 13th Street to Peoria Avenue; thence south along the center line of Peoria Avenue to 61st Street, thence west along the center line of 61st Street to the east bank of the Arkansas River, thence southward following the east bank of the Arkansas River to a point opposite and directly north of Mingo Road; thence south across the Arkansas River, and following the center line of Mingo Road to the intersection of Mingo Road and the boundary line between Tulsa County and Okmulgee County.

(c) District No. 35 shall comprise all of that portion of Tulsa County lying south and east of a line described as: Beginning at a point where 145th Street East intersects the boundary line between Tulsa County and Rogers County

at the extreme southwest corner of Rogers County, thence south along the center line of 145th Street East to Admiral Place; thence west along the center line of Admiral Place to Memorial Drive; thence south along the center line of Memorial Drive to 4th Place; thence west along the center line of 4th Place to Harvard Avenue; thence south along the center line of Harvard Avenue to 5th Street; thence west along the center line of 5th Street to Lewis Avenue; thence south along the center line of Lewis Avenue to 13th Street; thence west along the center line of 13th Street to Peoria Avenue; thence south along the center line of Peoria Avenue to 61st Street; thence west along the center line of 61st Street to the east bank of the Arkansas River; thence southward, following the east bank of the Arkansas River to a point opposite and directly north of Mingo Road; thence south across the Arkansas River and following the center line of Mingo Road to the intersection of Mingo Road and the boundary line between Tulsa County and Okmulgee County.

Section 5: Four year tenure

The term of office of all State Senators shall be four years, except as herein provided.

Section 6. Senators elected in 1964—Tenure

One State Senator shall be elected from each of the following numbered districts at the regular State general election held during the year Nineteen Hundred Sixty-four; and the Senator so elected from each such district shall hold office for a term of four years commencing the fifteenth day succeeding such general election:

DISTRICTS NOS. 2, 5, 9, 10, 13, 14, 17, 19, 22, 23, 24, 26, 27, 28, 31, 32, 34, 36, 38, 39, 41, 43, 44, 47.

Section 7. Senators elected in 1966—Tenure

One State Senator shall be elected from each of the following numbered districts at the regular State general

election held during the year Nineteen Hundred Sixty-six; and the Senator so elected from each such district shall hold office for a term of four years commencing the fifteenth day succeeding such general election:

DISTRICTS NOS. 1, 3, 4, 6, 7, 8, 11, 12, 15, 16, 18, 20, 21, 25, 29, 30, 33, 35, 37, 40, 42, 45, 46.

Section 8. Senators elected from Districts 18, 20, 30, and 33 in 1964—Tenure

Notwithstanding any provision herein to the contrary, State Senators shall be elected from Districts Nos. 18, 20, 30, and 33 at the regular State general election held during the year Nineteen Hundred Sixty-four, and the Senator so elected from each such district shall hold office for a term of two years commencing the fifteenth day succeeding such general election.

Section 9. Certain senators elected in 1962—Tenure

Notwithstanding any provision herein to the contrary, each State Senator heretofore elected for a four-year term at the general election held during the year Nineteen Hundred Sixty-two from a previously-existing senatorial district comprising in whole or in part territory by this Act included within District No. 5 or District No. 28, as herein described, shall serve for the remainder of the four-year term for which he was elected, or until fifteen days succeeding the regular general election held during the year Nineteen Hundred Sixty-six, unless he shall sooner vacate such office.

Section 10. Twenty-two senators elected in 1962—Tenure

Twenty-two of the present State Senators who were elected at the general election of 1962 for terms of four years shall continue to serve for the term of office for which they were elected.

Section 11. Legislative intent

It is hereby declared to be the intention of the legislature that neither this Act, nor any section, clause, provision, part, or sentence thereof shall be severable from or exist separately from this Act or any other section, clause, provision, part, or sentence thereof; and that if any such section, clause, provision, part, or sentence of this Act shall hereafter be adjudged by final judgment of any court of competent jurisdiction to be unconstitutional, or otherwise invalid or ineffective for any reason whatever, then and in that event this entire Act and each and every section and provision thereof shall thereby be invalidated, and this Act shall thereupon be null and void in its entirety for all purposes.

Section 12. Repealer

14 O.S. 1961, §§ 9 through 14, 21, 22, 31, 32, 33, 41, 42, 43, 45.1, 45.2, 45.3, 45.4, 51, 52, 53, 54, 55, 61, 62, 63, 71, and 72 are hereby repealed.

Approved March 7, 1963.

APPENDIX V.

LEGISLATURE—APPORTIONMENT
S.J. Res. No. 4

A Joint Resolution directing the Secretary of State to refer to the people an amendment to Article V of the Oklahoma Constitution relating to apportionment of the State Legislature; providing formulae for determination of membership of Legislature; establishing four-year terms for Senators and two-year terms for Representatives; directing Legislature to apportion the Legisla-

ture; creating an Apportionment Commission; designating members thereof; directing Commission to apportion Legislature when Legislature fails to act; providing for review of legislative or commission apportionment by the Oklahoma Supreme Court; authorizing Supreme Court to require Commission to reapportion under the provisions of the Oklahoma Constitution; requiring court to issue decision within certain time; repealing conflicting sections of Oklahoma Constitution; providing for ballot title; and ordering a special election.

WHEREAS, the history of the United States under a republican form of government, as established by the Constitution, recognizes the value of representative government based on governmental units with like political, social, and economic interests; and

WHEREAS, to properly balance conflicting views and opposite purposes, it is desirable that the legislature of a democratic government provide for adequate and fair representation of those groups which have similar political, social, and economic interests; and

WHEREAS, the establishment of county units of government by the Constitution of Oklahoma was based upon a consideration of the political, social, and economic similarity of interests of the people included within such governmental units; and

WHEREAS, the growth and progress of Oklahoma has encouraged and identified such units of government as representative of groups of people with like and similar political, social, and economic interests; and

WHEREAS, the fair and equitable representation to be provided in the Oklahoma Legislature should include not only population but other major factors such as the federal

analogy, history, economics, custom, territory, and similar and related factors, in order that invidious discrimination will not divest segments of the population of their representation.

Now, Therefore, be it resolved by the Senate and the House of Representatives of the Twenty-Ninth Legislature of the State of Oklahoma:

Section 1. The Secretary of State shall refer to the people, for their approval or rejection, as and in the manner provided by law, the following proposed amendment to Article V of the Oklahoma Constitution:

Section 1. Article V of the Constitution of Oklahoma is hereby amended by adding thereto the following new sections:

Section 9A. The state shall be apportioned into forty-eight senatorial districts in the following manner: the nineteen most populous counties, as determined by the most recent Federal Decennial Census, shall constitute nineteen senatorial districts with one senator to be nominated and elected from each district; the fifty-eight less populous counties shall be joined into twenty-nine two-county districts with one senator to be nominated and elected from each of the two-county districts. In apportioning the State Senate, consideration shall be given to population, compactness, area, political units, historical precedents, economic and political interests, contiguous territory, and other major factors, to the extent feasible.

Each senatorial district, whether single county or multi-county, shall be entitled to one senator, who shall hold office for four years; provided that any senator, serving at the time of the adoption of this amendment, shall serve the full time for which he was elected. Vitalization of senatorial districts shall provide for one-half of the senators to be elected at each general election.

Section 10A. The House of Representatives shall consist of the number of Representatives as determined by the formula and procedure set forth herein. The number of members of the House of Representatives to which each county shall be entitled shall be determined according to the following formula:

a. The total population of the state as ascertained by the most recent Federal Decennial Census shall be divided by the number one hundred and the quotient shall be the ratio of representation in the House of Representatives, except as otherwise provided in this Article.

b. Every county having a population less than one full ratio shall be assigned one Representative; every county containing an entire ratio but less than two ratios shall be assigned two Representatives; every county containing a population of two entire ratios but less than three ratios shall be assigned three Representatives; and every county containing a population of three entire ratios but less than four ratios shall be assigned four Representatives.

After the first four Representatives, a county shall qualify for additional representation on the basis of two whole ratios of population for each additional Representative.

Each Representative nominated and elected shall hold office for two years.

Section 11A. The first apportionment of the legislature shall be accomplished by the legislature under the formulae contained in Sections 9A and 10A, within sixty days after the first regular session of the legislature following the adoption of this amendment, and thereafter the apportionment shall be within sixty days after the convening of the first regular session of the legislature following each Federal Decennial Census. If the legislature shall fail or refuse to make such apportionment within sixty days after the

convening of the legislature after the adoption of this amendment, or if it should thereafter fail within the time provided herein to make such reapportionment, then such apportionment or reapportionment, as the case may be, shall be accomplished by an Apportionment Commission composed of the Attorney General, Secretary of State, and the State Treasurer of the State of Oklahoma according to the provisions of Sections 9A and 10A of this Article.

Section 11B. Each order of apportionment rendered by the Apportionment Commission shall be in writing and shall be filed with the Secretary of State and shall be signed by at least two members of the Commission.

Section 11C. Any qualified elector may seek a review of any apportionment order of the Commission, or apportionment law of the legislature, within sixty days from the filing thereof, by filing in the Supreme Court of Oklahoma a petition which must set forth a proposed apportionment more nearly in accordance with this Article. Any apportionment of either the Senate or the House of Representatives, as ordered by the Commission, or apportionment law of the legislature, from which review is not sought within such time, shall become final. The court shall give all cases involving apportionment precedence over all other cases and proceedings; and if said court be not in session, it shall convene promptly for the disposal of the same.

Section 11D. Upon review, the Supreme Court shall determine whether or not the apportionment order of the Commission or act of the legislature is in compliance with the formula as set forth in this Article and, if so, it shall require the same to be filed or refiled as the case may be with the Secretary of State forthwith, and such apportionment shall become final on the date of said writ. In the event the Supreme Court shall determine that the apportionment order of said Commission or legislative act is not

in compliance with the formula for either the Senate or the House of Representatives as set forth in this Article, it will remand the matter to the Commission with directions to modify its order to achieve conformity with the provisions of this Article.

Section 11E. The Supreme Court, upon petition of any qualified elector alleging failure of the Commission to timely act, is hereby vested with original jurisdiction to compel, and shall compel, the Commission to make the apportionment as herein provided. It shall also have exclusive jurisdiction of any review hereunder. If more than one petition be filed, the court shall consolidate such proceedings for hearing and disposition, and shall file its opinion and issue its writ within sixty days from the timely filing of such last petition. In the event any action filed hereunder shall be abandoned or dismissed, any other qualified elector shall be allowed to intervene within ten days thereof.

Section 2. §§ 9, 9(a), 9(b), 10, 11, 12, 13, 14, 15, and 16 of Article V of the Oklahoma Constitution are hereby repealed

Section 2. Ballot title

The ballot title for the proposed constitutional amendment as set forth in SECTION 1 of this resolution shall be in the following form:

BALLOT TITLE

Legislative Referendum No. ..... State Question No. .....

THE GIST OF THE PROPOSITION IS AS FOLLOWS:

Shall a Constitutional Amendment amending Article V of the Oklahoma Constitution relating to apportionment of the state legislature; providing for not less than forty-eight Senators; establishing four-year terms for Senators and two-year terms for Representatives; providing apportionment to be by prescribed formulae; designating legislature to make

apportionment within certain time; creating an Apportionment Commission; designating members thereof; directing Commission to apportion legislature when legislature fails to act; providing for review of legislative or Commission apportionment by the Supreme Court; authorizing Court to require Commission to reapportion under the provisions of the Constitution; requiring Court to issue decision within certain time; repealing conflicting sections of the Constitution

be approved by the people?

SHALL THE PROPOSED AMENDMENT BE APPROVED? ☐ YES ☐ NO

Section 3. Filing copies

The President Pro Tempore of the Senate shall, immediately after the adoption of this resolution, prepare and file one copy thereof, including the above ballot title, with the Secretary of State and one copy with the Attorney General of the State of Oklahoma.

Section 4. Special election

A special election is hereby ordered to be held throughout the State of Oklahoma on the date of the next runoff primary election at which time the proposed amendment to the Constitution of the State of Oklahoma, set forth in SECTION 1 of this resolution, shall be submitted to the people of Oklahoma for their approval or rejection as and in the manner provided by law.

SUPREME COURT, U.S.
Office-Supreme Court, U.S.
FILED
NOV 13 1963
JOHN F. DAVIS, CLERK

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 534

OKLAHOMA FARM BUREAU and LEWIS H. MUNN,
Appellants,

VERSUS

HARRY R. MOSS, ET AL.,
Appellees.

MOTION TO DISMISS

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SUBJECT INDEX

	PAGE
Motion to Dismiss	1
Facts	2
Legal Reasons for Dismissal	5
Conclusion	5

AUTHORITIES CITED

CASES:

Allen, et al. v. Burkhart, et al., 377 P.2d 821	4
Baker v. Carr, 369 U.S. 186, 82 S.Ct. 691, 7 L. Ed.2d 663	2
Electrical Fillings Corporation, et al. v. Thomas & Betts Co., et al., 307 U.S. 241, 59 S.Ct. 860 (1939)	5
Lindheimer, et al. v. Illinois Bell Telephone Co., 292 U.S. 151, 54 S.Ct. 658 (1934)	5
Mugford v. Mayor and City Council, Md., 44 A.2d 745, 162 A.L.R. 1101 (1946)	5
New York Telephone Co. v. Maltbie, et al., 291 U.S. 645, 54 S.Ct. 443 (1934)	5
Public Service Commission of Missouri, et al. v. Brashear Freight Lines, Inc., et al., 306 U.S. 204, 59 S.Ct. 480 (1939)	5

MISCELLANEOUS:

69 A.L.R.2d 701	5

INDEX CONTINUED PAGE

APPENDIX

Application of Oklahoma Farm Bureau and Lewis H. Munn to Intervene i

Answer of Intervenors, Oklahoma Farm Bureau and Lewis H. Munn iv

In the
Supreme Court of the United States
OCTOBER TERM, 1963

No. .....

OKLAHOMA FARM BUREAU and LEWIS H. MUNN,
Appellants,

VERSUS

HARRY R. MOSS, ET AL.,
Appellees.

MOTION TO DISMISS

This Motion to Dismiss is directed to the appeal of the Oklahoma Farm Bureau and Lewis H. Munn, Intervenors, who intervened in the matter on July 31, 1962. This appeal from the three-judge United States District Court for the Western District of Oklahoma, is one of three that has been lodged. In No. 476, October Term, 1963, a Motion to Dismiss was heretofore filed against an appeal taken by state officials who had requested the court below to act in the manner in which it ultimately acted. No Motion to Dismiss has been filed, nor will one be filed by this Appellee against the third appeal brought by a majority of the State Senate who consistently opposed any action by the Court below and thereby preserved their record for appeal. This Appellee further submits that if there are to be further hearings in this proceeding it would be most appropriate

that those who have been responsible for the failure to preserve constitutional rights in the State of Oklahoma should carry the burden on appeal.

FACTS

This action was instituted in the United States District Court for the Western District of Oklahoma on January 31, 1961. No material action was taken pending the ruling in *Baker* v. *Carr*, decided March 26, 1962.

Thereafter a hearing on April 23, 1962, resulted in a 2 to 1 decision denying immediate injunctive relief which would have affected the then pending primary elections and the composition of the present Legislature (Appellants' Appendix I, pp. i through xxiv).

Thereafter on June 12, 1962, further hearings were held and the Court's ruling which is reported at 207 F. Supp. 898 (Appellants' Appendix IV, pp. xxvi through xxxviii) was entered on June 19, 1962.

The Interlocutory Decree was entered on June 19, 1962, adjudging that the statutes of the State of Oklahoma relating to apportionment were invidiously discriminatory against the plaintiff and his class and were null and void (Appellants' Appendix III, pp. xxv, xxvi). This Decree provided that the matter be continued until July 31, 1962 "for the effectuation of appropriate relief and final judgment."

On July 31, 1962, these Appellants for the first time entered the case. On that date they filed their application to intervene and their answer printed as the Appendix

hereto. They filed no subsequent pleading until after all hearings were concluded when they filed Findings of Fact, Conclusions of Law and a proposed Decree.

The prayer of Appellants' Answer states:

"WHEREFORE, your Intervenors pray:

"(1) That this action be continued until ten (10) days after an election is held on the pending Initiative Petition; that in the event said Petition and Amendment to the Constitution is adopted by the voters of the State of Oklahoma, that this action be then dismissed;

"(2) If the same should fail to pass and be adopted, that this Court then continue this cause to a date subsequent to the convening date of the Oklahoma Legislature, affording it a reasonable time within which to effect a Constitutional re-apportionment;" (in the body of the Answer thirty days after convening was suggested as a reasonable time)

"(3) In the event neither the Initiative Petition nor appropriate Legislation is adopted, then that this Court proceed to make re-apportionment in accordance with the present, existing Constitutional formula."

The Decree entered pursuant to the July 31, 1962 hearing was filed August 3, 1962 (Appellants' Appendix V, p. xxxviii). In this Decree the court continued the matter until the 8th day of March, 1963, to afford an opportunity to the people of the State to vote on the then pending Initiative Petition creating an Apportionment Commission and to afford the Legislature which convened January 8, 1963, two months to discharge its constitutional responsibility to reapportion. This granted the relief sought by these

Appellants in paragraphs (1) and (2) of their prayer. The court then granted the relief sought in paragraph (3) but only after the Legislature had adjourned *sine die* more than one-third of a year after the court's final hearing on March 8, 1963. The court's final order did reapportion according to the Oklahoma Constitution; except only that the limit of seven representatives per county was held to be violative of the XIV Amendment and void (Appellants' Appendix VII, pp. lii through lxxi).

These Appellants in their answer, proposed for the trial court's use an apportionment formula which they called "ideal" and which they stated they believed should be adopted. That formula provided for 19 representatives for Oklahoma County and 15 for Tulsa County, based on the 1960 Census. Thus they asserted that there should be no limit of seven representatives to a county.

These Appellants have appealed and in their Jurisdictional Statement, pages 6 and 7, set out what they denominate "Questions Presented by This Appeal." None of these questions were raised in the pleadings by these Appellants.

The Initiative Petition was voted upon on November 6, 1962, and did receive a majority of all votes affirmatively cast in the election and was considered adopted by the Governor, Secretary of State and State Election Board, but at the instance of the State Senators, intervenors in this suit, the Supreme Court of Oklahoma held that such petition was not adopted. (See *Allen, et al.* v. *Burkhart, et al.*, 377 P.2d 821.)

The Court did subsequently judicially apportion by accepting the plan adopted by the state officers who were

de facto members of the Apportionment Commission established by the petition and approved by the Attorney General as conforming to the State Constitution.

LEGAL REASONS FOR DISMISSAL

The legal question involved in this motion is whether a party may appeal from a judgment which he has urged the Court to enter.

The following cases sustain the proposition that a party may not appeal from a judgment or decree which it has urged the trial court to enter:

Lindheimer, et al. v. *Illinois Bell Telephone Co.*, 292 U.S. 151, 54 S.Ct. 658 (1934); *New York Telephone Co.* v. *Maltbie, et al.*, 291 U.S. 645, 54 S.Ct. 443 (1934); *Electrical Fillings Corporation, et al.* v. *Thomas & Betts Co., et al.*, 307 U.S. 241, 59 S.Ct. 860 (1939); and *Public Service Commission of Missouri, et al.* v. *Brashear Freight Lines, Inc., et al.*, 306 U.S. 204, 59 S.Ct. 480 (1939).

See also 69 A.L.R.2d 701 on: *Right of winning party to appeal from judgment granting him full relief sought.*

Where the relief prayed for by a party is granted he may not appeal from the judgment.

Mugford v. *Mayor and City Council*, Md., 44 A.2d 745, 162 A.L.R. 1101 (1946).

CONCLUSION

These Intervenors importuned the Court to grant a delay in affording relief to allow the people of Oklahoma an opportunity to vote on the Initiative Petition then pend-

ing. The Court did so! These parties further requested that the Legislature be given an additional period of thirty days after convening. The Court gave two months and then withheld action until the Legislature adjourned *sine die* without complying with either the Federal or State Constitution. Finally these Appellants specifically requested the Court to judicially apportion if the Initiative Petition and the Legislature both failed. The Court did this too!

These Appellants now seek to question the jurisdiction of the Court to apportion. We submit that under the established appellate rules and statutes they are not aggrieved parties entitled to appeal and that their appeal should be dismissed.

Respectfully submitted,

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November, 1963.

APPENDIX

(Caption omitted)

APPLICATION OF OKLAHOMA FARM BUREAU AND LEWIS H. MUNN TO INTERVENE

COME NOW Oklahoma Farm Bureau, an Oklahoma corporation, dedicated to the protection of the rights, liberties, and well being of its more than 40,000 farm and ranch families of Oklahoma, and Lewis H. Munn, individually, as its President, and as a citizen and qualified elector of the State of Oklahoma, and move to intervene in this action, in order to assert their rights and claims as set forth in their proposed Answer, of which a copy is hereto attached, on the following grounds: [Rule 24(a) and (b)].

The representation of the interests of these applicants by the existing parties to this action is inadequate, and these applicants will be bound, and all of the members of Oklahoma Farm Bureau will be definitely affected by the final judgment and determination in this action. In this connection, it is respectfully suggested that the position of the present parties may be summarized, as follows:

(A) The plaintiff seeks radical re-apportionment at the hands of this Court, but has submitted no plan or method therefor.

(B) The Governor as a defendant, admits the existence of mal-apportionment in the State of Oklahoma, and, while he mentioned the existence of an Initiative Petition then pending before the Supreme Court of Oklahoma, his answer was filed prior to the time the Supreme Court had approved said Petition, which provides for a Constitutional method of re-apportionment, and no supplemental answer has been filed, since said

Petition was approved, and now awaits action by the Governor and the people.

(C) The Attorney General, representing certain of the defendants, concedes mal-apportionment, but contends certain portions of the Oklahoma Constitution relative to representation violates the Fourteenth Amendment of the United States Constitution.

(D) The Oklahomans for Local Government would appear to prefer the present status quo of representation in Oklahoma.

Your applicant intervenors, as more fully reflected by their tendered Answer attached hereto:

(1) Assert that mal-apportionment does exist today.

(2) That re-apportionment should be effected in strict accordance with the provisions of the Oklahoma Constitution, as it exists, or as it may be modified by determination of the legal voters, not later than the general November election.

It is therefore obvious that the representation of the interests of these applicants, and the membership of Oklahoma Farm Bureau by existing parties to this action is inadequate; and this application is filed promptly pursuant to the authority and direction of the Board of Directors of Oklahoma Farm Bureau at its recent Board meeting. No delay will result, and your applicants will seek no delay in the final disposition of this case, by virtue of its being permitted to intervene.

Applicants' claim presents questions both of law and of fact, in common with those of the main action, although its prayer for relief differs with both that of the plaintiff and the existing defendants.

WHEREFORE, your applicants pray that they be granted leave to intervene herein, and to file their Answer as represented by the attached copy thereof.

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of OTJEN, CARTER, HUDDLESTON & OTJEN

Attorneys for Applicants
Enid, Oklahoma

[APPENDIX]

(Caption omitted)

ANSWER OF INTERVENORS, OKLAHOMA FARM BUREAU AND LEWIS H. MUNN

COME NOW the intervenors, Oklahoma Farm Bureau and Lewis H. Munn, and for their Answer herein, assert:

I

Notwithstanding the fact that the intervenors herein, and the 40,000 farm and ranch families who are members of Oklahoma Farm Bureau, are presently in a favored position with regard to their present representation in the Oklahoma Legislature, they are, nevertheless, realistically conscious of the fact that the involuntary premium in Legislative representation which has been accorded to them, has been done so at the expense of the urban citizens of Oklahoma, which has resulted in the present mal-apportionment.

II

Such inequitable apportionment, your intervenors assert, is the result of the continued failure on the part of the Legislature to apportion the State in accordance with the formula set forth in the Constitution. Consistently, your intervenors have endeavored to generate action in the Legislative assembly to secure apportionment based upon the Constitution; and, in fact, have advocated Amendments to the Constitution to provide for a more realistic apportionment.

III

In contra-distinction to the positions assumed by the various parties to this action, your intervenors have always, and do now, allege and assert that any fair and equitable apportionment must be accomplished pursuant to the terms and formula as articulated by the Constitution of Oklahoma as it now exists, or, as it may be lawfully amended.

In this connection, it may be observed, that there are those in this proceeding who challenge not only the present statutory apportionment [with which challenge we agree], but, also question the competence of this Court to rationalize certain provisions of the Oklahoma Constitution relating to the selection of Legislative members, with the Equal Protection clause of the Fourteenth Amendment. The answer to this, of course, is that the Oklahoma Constitution does provide for a republican form of government. The Fourteenth Amendment of the United States Constitution was in effect in 1907 when Oklahoma was admitted to the Union, and Oklahoma's proposed Constitution was carefully scrutinized by Congress and by the President of the United States. It was assumed, and rightfully so, that our State Constitution would be complied with; and that such compliance would not run afoul of the Fourteenth Amendment. Unfortunately, each succeeding Legislature has not seen fit to implement the express provisions of our basic document. It therefore became appropriate for over 130,000 voting citizens of Oklahoma to avail themselves of another very important provision of our Constitution, to-wit: the Initiative. This Initiative Petition has now been approved by the Supreme Court of Oklahoma, subject only to a last minute Petition for Re-Consideration filed by the other intervenors herein. As soon as the ballot title is approved, and the Governor should call a special election, the measure could be voted on by the citizens of Oklahoma immediately. In any event, the people of Oklahoma will have an opportunity to express their opinion at the November election.

Since the Legislature has failed to act, the substance of this Petition is to form and create a Commission, by Constitutional Amendment, which *will* effectuate apportionment in accordance with the Constitutional formula.

The Initiative provision was also an integral part of the Oklahoma Constitution in 1907, when it was admitted to the Union; and is entitled to the same weight and consideration as every other portion of our Constitution. It

would be assumed that it was a safeguard inserted in our Constitution, patterned after the 1902 provision of the Oregon Constitution, to provide a remedial process by which any inequities in Legislative representation, such as now exists, could be rectified by the citizens adversely affected.

In this further connection, your intervenors assert, and it should be noted, that the plaintiff Mr. Moss, states that he brings this action for himself and all persons similarly situated. Presumably, and obviously, he refers by the term "those similarly situated," to all the legal voters in the large metropolitan centers of Oklahoma. This being true, since the metropolitan centers embrace a majority of the legal voters of Oklahoma, the plaintiff and the class he represents are in a position to implement and effectuate the present Constitutional formula by a favorable vote on the impending Initiative Petition.

IV

Your intervenors, therefore, assert that their position is:

1. That re-apportionment is not only desirable, but necessary.
2. But, that the Constitutional processes of our republican form of government, both in Oklahoma and in the United States of America, should be preserved; and
3. That the people of Oklahoma should therefore have an opportunity to vote on the proposed amendment to the Constitution, or if the proposed amendment should fail, then the Oklahoma Legislature (which has not had an opportunity to meet since either the decision in the Tennessee case, or since the Court's opinion of June 12), should be accorded at least thirty (30) days after con-

vening in January, to effect Constitutional apportionment, before this Court undertakes to perform the drastic operation of judicial re-apportionment.

In this connection, the Court will note from the Attorney General's Trial Brief of July 5, 1962, that he quotes extensively from the concurring opinion of Justice Clark in the case of Baker v. Carr, 82 S. Ct., 691. Your intervenors would observe that Justice Clark also included in his concurring opinion with the majority, the following significant statement:

> "Although I find the Tennessee apportionment statutes offend the equal protection clause, I would not consider intervention by this Court into so delicate a field *if there were any other relief available to the people of Tennessee*. But, the majority of the people of Tennessee have no 'practical opportunities for exerting their political weight at the polls,' to correct the existing 'invidious discriminating.' Tennessee has no initiative and referendum."

V

In its annual formulation of policies, the membership and delegates of Oklahoma Farm Bureau have endeavored not to be selfish or arbitrary. They are fully cognizant of the differences between political and economic alignments in Oklahoma; but they are non-partisan and realistic, and have always given consideration to the rights and philosophies of individual citizens, and to the commercial, industrial and political groups and organizations of Oklahoma, knowing full well that what is beneficial to the State of Oklahoma, will, in turn, be of benefit to them. In its deliberations, the Board of Directors in the discharge of its duty of implementing these policies, has also been considerate and cognizant of the rights and purposes of other

citizens and groups. Your intervenors would therefore be less than frank with the Court, if this Answer should be interpreted as an endorsement of the present Constitutional formula for representation.

It is *not* satisfied. It recognizes there *has* been a shift of population to the metropolitan centers. It is cognizant of the fact that at least one House should be based substantially on population; but, adheres to the philosophy that the other House should certainly bear a definite relation to geography. Otherwise, if both Houses should be based solely on population, there would be no occasion for a bicameral Legislative assembly; and that the result would be purely unicameral.

As stated on May 24, by the Circuit Court of Maryland:

> "I feel, however, that one of the Houses (in Maryland, the Senate) can be constitutionally based upon area and geographical location regardless of population or eligible voters. Such an arrangement protects the minorities. It prevents hasty, although popular legislation at the time. It is based upon history and reason and helps to protect the republican form of government guaranteed to the States by Article IV, §4 of the United States Constitution. It preserves the checks and balances of the State Government which has worked so well under the Federal. Moreover, there would be little advantage in having a bicameral legislature if the composition and qualifications of the members were similar."

When the ratifying States and Congress adopted the Seventeenth Amendment to the United States Constitution in 1913, providing for the election by the voters of the separate states, of two Senators each to the United States

Senate, regardless of population, it was accomplished with full knowledge of the Equal Protection clause contained in the Fourteenth Amendment to the Constitution adopted in 1866; and when Oklahoma was admitted, it was with full knowledge that the election of the Legislature involving the factors of area and political subdivisions was not violative of the Civil War Amendment.

The ideal formula, as issued by the Department of Public Relations of Oklahoma Farm Bureau, your intervenors believe should be adopted through our regular Constitutional processes, is hereto attached, and marked "Appendix 1." It provides for 38 Senators and 124 House members, based largely on the studies conducted, and plans formulated by the late eminent authority, Dr. Thornton—except, that it eliminates the confusing flotarial system, and does provide for a minimum of one representative for each county, and 19 for Oklahoma County, and 15 for Tulsa County, based on the 1960 Census.

Intervenor reiterates its position, however, that whatever merit may inherently appear in the Oklahoma Farm Bureau formula, *the Constitutional formula must first be implemented;* and any changes or modifications should thereafter be adopted through the regular Constitutional processes provided by the Oklahoma Constitution.

VI

WHEREFORE, your intervenors pray:

(1) That this action be continued until ten (10) days after an election is held on the pending Initiative Petition; that in the event said Petition and amendment to the Constitution is adopted by the voters of the State of Oklahoma, that this action be then dismissed;

(2) If the same should fail to pass and be adopted, that this Court then continue this

cause to a date subsequent to the convening date of the Oklahoma Legislature, affording it a reasonable time within which to effect a Constitutional re-apportionment;

(3) In the event neither the Initiative Petition, nor appropriate Legislation is adopted, then that this Court proceed to make re-apportionment in accordance with the present, existing, Constitutional formula.

Respectfully submitted,

OKLAHOMA FARM BUREAU

By: _____
Lewis H. Munn, President

By: _____
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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 534

OKLAHOMA FARM BUREAU and LEWIS H. MUNN,
Appellants,

VERSUS

HARRY R. MOSS, ET AL.,
Appellees.

RESPONSE TO MOTION TO DISMISS

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INDEX

	PAGE
Statement	1
Authorities	8
Conclusion	8
Certificate of Service	10

AUTHORITIES

STATUTES:

28 U.S.C., Sec. 1253	2-3, 8
28 U.S.C., Sec. 2281	3

MISCELLANEOUS:

Appendix, Jurisdictional Statement, p. lxxi	3
Appendix—Answer of Intervenors, Oklahoma Farm Bureau and Lewis H. Munn—Appendix to Motion, pp. (v) (vi (vii)	4-5
Movant's Appendix, p. ix	5, 6
Movant's Appendix, p. viii	6

APPENDIX

AUTHORITIES:

Electrical Fillings Corporation v. Thomas & Betts Co., et al., 307 U.S. 241, 59 S. Ct. 860 (1939)	ii
Lindheimer, et al. v. Illinois Bell Telephone Co., 292 U.S. 151, 54 S. Ct. 658 (1934)	i

INDEX CONTINUED PAGE

New York Telephone Co. v. Maltbie, 291 U.S. 645, 54 S. Ct. 443 (1944) ..... i-ii

Partmar Corp. v. Paramount Pictures Theatres, Corp. (1954), 347 U.S. 89, 98 L. Ed. 532, 74 S. Ct. 414 iii

Public Service Commission of Missouri v. Brashear Freight Lines, Inc., 306 U.S. 204, 59 S. Ct. 480 (1939) ..... ii-iii

69 A.L.R.2d 701 iii

In the
Supreme Court of the United States
OCTOBER TERM, 1963

No. 534

OKLAHOMA FARM BUREAU and LEWIS H. MUNN,
Appellants,

VERSUS

HARRY R. MOSS, ET AL.,
Appellees.

RESPONSE TO MOTION TO DISMISS

At the outset we think it is pertinent to note, without any reflection whatever upon counsel, but simply as a statement of fact, that none of the principal parties formerly represented by counsel at the outset of this case, have undertaken to challenge the appeal of Oklahoma Farm Bureau and Mr. Munn. Mr. Reynolds was originally counsel for the former Governor of the State of Oklahoma, and filed pleadings in his behalf. Mr. Edmondson is no longer Governor of Oklahoma; and the present Governor, although substituted as a party for the previous Governor, has acquiesced in our appeal by not having filed any Motion to Dismiss the same.

It is also interesting to note that the former State Treasurer, Mr. Burkhart, and the State Election Board were

originally represented in their governmental capacities by Mr. Stagner and Mr. Powers. The present State Treasurer is now represented by the Attorney-General, Mr. Charles Nesbitt, together with the State Auditor and the members of the Oklahoma Tax Commission; and none of them have seen fit to challenge the appeal of Oklahoma Farm Bureau and Mr. Munn; but on the other hand, have themselves through the Attorney General filed a Jurisdictional Statement challenging the order of the Federal Court.

It would therefore appear that none of the attorneys who have filed the Motion to Dismiss represent any of the principal figures in the original trial and hearing of this cause.

We think it is therefore significant to observe that neither the present Governor nor any of the elected officials of this State are seeking to deprive Oklahoma Farm Bureau and Mr. Munn of the privilege of presenting their appeal to this Court.

We wish, however, to logically, factually, and legally dispose of the motion filed herein to dismiss our appeal.

The appellees in substance insist that Oklahoma Farm Bureau and Mr. Munn were the prevailing parties; that they were not aggrieved; and that they therefore have no standing for the purpose of appeal.

We would quote again the statutory authority for this appeal (Title 28, U.S.C., § 1253):

> "*Direct appeals from decisions of Three Judge Courts.* Except as otherwise provided by law, *any party may appeal* to the Supreme Court from *an order, granting*, or denying, after notice and hearing,

> *an* interlocutory or permanent *injunction* in any civil action, suit or proceeding required by any act of Congress to be heard and determined by a District Court of three Judges." (Italics ours.)

There is no contention that under Section 2281, Title 28, U.S.C., this is not a proceeding "required by Act of Congress to be heard and determined by a District Court of three Judges."

Apparently the movants overlook the fact that an injunction was granted in this case; and that the election board was:

> "enjoined and restrained from accepting filings or conducting elections in any manner inconsistent with the provisions of this order and the statutes of the State of Oklahoma not inconsistent herewith"—See Appendix Jurisdictional Statement LXXI.

Movants admit in their motion that the order of apportionment rendered in connection with the injunction decree was not in conformity with the Constitution of the State of Oklahoma as it then existed.

Apparently appellants contend, superficially at least, that the order of injunction was not inconsistent with the position taken by the pleadings of Oklahoma Farm Bureau and Mr. Munn.

With this contention, we must violently disagree

At the time the original answer of these appellants was filed in Federal Court there was then pending an Initiative Petition; and it was then imminent that the Legislature would soon be in session. In view of these facts,

our answer suggested that in the event the petition and the proposed Amendment to the Constitution then pending were adopted, that this action should be dismissed. That if such petition should fail to pass, the Legislature should have a reasonable length of time within which to effect a constitutional reapportionment. That in the event neither the Initiative Petition then pending nor appropriate legislation were adopted, "then that this Court proceed to make reapportionment *in accordance with the present existing Constitutional formula.*"

Our position was made crystal clear in our answer when we stated:

> (See Appendix—Answer of Intervenors, Oklahoma Farm Bureau and Lewis H. Munn—Appendix to Motion, pp. (v) (vi) (vii)):
>
> "The Initiative provision was also an integral part of the Oklahoma Constitution in 1907, when it was admitted to the Union; and is entitled to the same weight and consideration as every other portion of our Constitution. It would be assumed that it was a safeguard inserted in our Constitution, patterned after the 1902 provision of the Oregon Constitution, to provide a remedial process by which any inequities in Legislative representation, such as now exists, could be rectified by the citizens adversely affected.
>
> "In this further connection, your intervenors assert, and it should be noted, that the plaintiff Mr. Moss, states that he brings this action for himself and all persons similarly situated. Presumably, and obviously, he refers by the term 'those similarly situated,' to all the legal voters in the large metropolitan centers of Oklahoma. This being true, since the metropolitan centers embrace a majority of the legal voters of Okla-

homa, the plaintiff and the class he represents are in a position to implement and effectuate the present Constitutional formula by a favorable vote on the impending Initiative Petition."

It is true that in the original answer of these appellants, we outlined a formula which it was felt would be more equitable; but we emphasized the fact that such formula *"should be adopted through our regular Constitutional processes"* (movant's Appendix, p. ix).

This position was further emphasized in our answer when we stated (movant's Appendix, p. ix):

> "Intervenor reiterates its opinion, however, that whatever merit may inherently appear in the Oklahoma Farm Bureau formula, the Constitutional formula must first be implemented; and any changes or modifications should thereafter be adopted through the regular Constitutional processes provided by the Oklahoma Constitution."

Following this, then, in the prayer of the Answer of these appellants, filed in the Federal Court, these appellants continued in their prayer for relief as follows:

> "WHEREFORE, your intervenors pray:
>
> "(1) That this action be continued until ten (10) days after an election is held on the pending Initiative Petition; that in the event said Petition and amendment to the Constitution is adopted by the voters of the State of Oklahoma, that this action be then dismissed;
>
> "(2) If the same should fail to pass and be adopted, that this Court then continue this cause to a date subsequent to the convening date of the Oklahoma Legis-

lature, *affording it a reasonable time within which to effect a Constitutional re-apportionment;*

"(3) In the event *neither the Initiative Petition, nor appropriate Legislation is adopted*, then that this Court proceed to make re-apportionment *in accordance with the present, existing, Constitutional formula.*"

Notwithstanding the position and the prayer embraced in the answer of these appellants, movants contend that none of the questions presented in our Jurisdictional Statement were raised in our pleadings. By careful reading of our answer, the Court will find that each and every question presented by this appeal, except No. 5 and No. 6, were covered by our answer.

These appellants insisted (movant's Appendix, p. viii):

"It is cognizant of the fact that at least one house should be based substantially on population; but adheres to the philosophy that the other house should certainly bear a definite relation to geography. Otherwise, if both houses should be based solely on population, there would be no occasion for a bicameral legislative assembly; and that the result would be purely unicameral."

It insisted that (movant's Appendix, p. ix):

"The Constitutional formula must first be implemented; and any changes or modifications should thereafter be adopted through the regular Constitutional processes provided by the Oklahoma Constitution."

These announcements of position in addition to the prayer of these appellants certainly constituted adequate grounds for all of the questions presented with the exception of Questions 5 and 6.

In addition to the answer filed by these appellants in the original case, and promptly following the Interlocutory Order which the Court entered on July 31, 1962, these appellants filed with the Clerk of the United States District Court for the Western District of Oklahoma their "Notice of Appeal to the Supreme Court of the United States," and which was a pleading filed with the lower court, and which notice embraced the following questions:

> "1. Does the Federal Court have the right, the authority and the jurisdiction to direct or decree reapportionment of the Legislature under a formula devised by it which violates the Constitution of a State, which provides for a republican form of government, and which Constitution was approved and ratified by the United States Government on admission of such State to the Union subsequent to the adoption of the Fourteenth Amendment to the United States Constitution?
>
> "2. Does the Federal Court have the right, the authority and the jurisdiction to direct a decree reapportionment of the Legislature in a State whose Constitution provides for amendment to the Constitution by initiative petition, and notwithstanding the fact that such an initiative petition regarding re-apportionment has been filed, but not yet voted upon?"

Subsequent thereto, and in June 1963, as appears from the record, these appellants also filed with and in the Federal Court, proposed Findings of Fact and Conclusions of Law in which they again called attention to facts which justify and would authorize all of the questions presented by this appeal, including questions 5 and 6, which involve the pendency of the referendum on the proposed Constitutional Amendment.

All of these pleadings the Court had before it at the time of the rendition of its Final Decree.

AUTHORITIES

The legal authorities cited by movant are not applicable (See Appendix 1 attached hereto).

The right of these appellants to appeal to the Supreme Court is granted under Title 28, § 1253 U.S.C. *supra*. These appellants were parties to that action. An injunction was granted, enjoining the election board from accepting any filings for legislative office except those who offered to file in accordance with the apportionment decree spelled out by the Court. This apportionment decree was in direct violation of the Constitution of Oklahoma or as such Constitution may hereafter be amended. These appellants have at all times in their pleadings and in their appearances and in their arguments, insisted that any such reapportionment must be in conformity with the Oklahoma Constitution, or as it may be amended, in accordance with Oklahoma Constitutional processes. The injunction does violence to the Oklahoma Constitution, and ignores our Constitutional remedy by the Initiative and Referendum.

CONCLUSION

It is respectfully submitted that the injunctive decree constitutes a denial of the relief suggested by these appellants. It violates the Constitution of Oklahoma. It ignores the inherent remedy afforded the plaintiffs by the Oklahoma Constitution under the Initiative and Referendum.

These appellants are aggrieved by the Order; and again may we suggest that not even the plaintiff, not even the Governor, not even the Attorney General, and not even any of the state officials have objected to our lodging this appeal; and that by virtue of their not having filed a Motion to Dismiss, they have tacitly agreed that our appeal should be docketed and heard by the Supreme Court of the United States.

Respectfully submitted,

FRANK CARTER,
Enid, Oklahoma,
Attorney for Appellants.

Of Counsel:
OTJEN, CARTER, HUDDLESTON & OTJEN,
Bass Building,
Enid, Oklahoma,

December, 1963.

CERTIFICATE OF SERVICE

I, Frank Carter, attorney for appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 2nd day of ~~November~~ December, 1963, I served copies of the foregoing Response to Motion to Dismiss on the several parties thereto, as follows, by mailing copies in duly addressed envelopes, with first-class postage prepaid to their respective attorneys of record, as follows:

Sid White, Commerce Exchange Bldg., Oklahoma City, Oklahoma; John E. Wagner, 1st Nat'l Bldg., Oklahoma City, Oklahoma; Norman E. Reynolds, Jr., 1st Nat'l Bldg., Oklahoma City, Okla.; Delmer L. Stagner, Liberty Bank Bldg., Oklahoma City, Okla.; James A. Rinehart, El Reno, Okla.; Charles Nesbitt, Attorney General, State Capitol, Oklahoma City, Okla.; Fred Hanson, Assistant Attorney General, Capitol Bldg., Oklahoma City, Okla.; Albert D. Lynn, c/o Oklahoma Tax Comm'n, State Capitol, Oklahoma City; E. J. Armstrong, c/o Oklahoma Tax Comm'n, Oklahoma City, Oklahoma, and Leon Hirsh, Oklahoma Natural Bldg., Oklahoma City, Okla.

Frank Carter

FRANK CARTER

APPENDIX

APPENDIX I

Lindheimer, et al v. Illinios Bell Telephone Co., 292 U. S. 151, 54 S. Ct. 658 (1934)

Syllabus #10. Telephone company which secured decree in its favor in District Court, held not entitled to prosecute appeal for purpose of procuring review of findings of court with respect to value of company's property or other findings. (Judicial Code §266-28 USCA §380).

Paragraph #10, page 668. The company was successful in the District Court and has no right of appeal from the Decree in its favor. The company is not entitled to prosecute such an appeal for the purpose of procuring a review of the findings of the court below with respect to the value of the company's property or the other findings of which it complains. Its contentions in these respects have been considered in connection with the appeal of the State authorities and the City. The appeal of the company is dismissed—*New York Telephone Company* v. *Maltbie, et* al, 291 U.S. 645, 54 S. Ct. 443 (1934), 78 L. Ed.

New York Telephone Co. v. Maltbie, 291 U.S. 645, 54 S. Ct. 443 (1934).

Syllabus. Where telephone company procured permanent injunction unqualifiedly restraining as confiscatory, inforcement of public service commission's rate orders, it could not appeal from portions of decree fixing value of its property for 1924, 1926, and 1928 and rate of return to be allowed, since such portions would not be res judicata in event of further legislative action by commission.

CAVEAT: The telephone company secured its injunction but appealed the portion of the decree fixing value of its property. In denying the appeal, the court cited several cases, all of which hold that the fixing of valuation and rate of return by a State public service commission, is

a legislative act and any decision by a Federal Court would not be res judicata on the Commission acting in its legislative capacity.

Electrical Fillings Corporation v. Thomas & Betts Co., et al., 307 US 241, 59 S. Ct. 860 (1939)

Syllabus 3. Although District Court had dismissed bill in patent infringement suit for failure to prove infringement, Circuit Court of Appeals had jurisdiction to entertain defendant's appeal from so much of the decree as adjudicated one of claims valid, not for purposes of passing on merits, but to direct reformation of decree so as to eliminate adjudication concerning validity. (Judicial Code 128, as Amended, 28 USCA §225)

Par. 1-3. A party may not appeal from a judgment or decree in his favor for the purposes of obtaining a review of findings he deems erroneous which are not necessary to support the decree. But here, the decree itself purports to adjudge the validity of Claim #1, and though the adjudication was immaterial to the disposition of the cause, it stands as an adjudication of one of the issues litigated. We think the petitioners were entitled to have this portion of the decree eliminated, and that the Circuit Court of Appeals had jurisdiction, as we have held this Court has, to entertain the appeal, not for the purpose of passing on the merits, but to direct the reformation of the decree. See Gully v. Interstate Natural Gas, 292 US 16, 54 S. Ct. 565, 78 L. Ed. 1088.

CAVEAT: The Gully case merely holds that the action considered in the case was not proper for a three-man Court, and remanded to a one-man Court.

Public Service Commission of Missouri v. Brashear Freight Lines, Inc., 306 US 204, 59 S. Ct. 480 (1939)

Suit brought by Brashear against Public Service Comm. to restrain the enforcement of the Missouri Bus & Truck

Act; Public Service Comm. filed a counter-claim seeking an accounting from plaintiffs for fees due to the State under the Act for the use of public highways. The public service commission of the State of Missouri appealed seeking review of the paragraph of the Decree, as amended, dismissing the counter-claim. The case holds that the public service comm. was granted the injunction and was the successful party, could not appeal as to the dismissal of the counter-claim alone, as the only provision for a direct appeal was an appeal as to the injunction itself.

The Court says:

> "No appeal has been taken to review the decree denying the injunction—this court is without jurisdiction. Sec. 266, as originally enacted applied only to cases in which an interlocutory injunction was granted or denied, and the purpose was to make interference by such an injunction with the enforcement of state legislation a matter for the adequate hearing and full deliberation which the presence of three judges was likely to secure. (several cases cited)"

69 A.L.R. 2d 701:

The general rule stated in § 19A Supra under which the prevailing party cannot appeal from a judgment for the purpose of attacking adverse findings is not without exceptions. The United States Supreme Court has stated that a prevailing party has the right to appeal from those parts of a judgment in his favor which are based upon a finding of law or fact adverse to his interest where the finding is essential to the court's determination of the controversy, and, hence, in the absence of an appeal, would form the basis for collateral estoppel. Partmar Corp. v. Paramount Pictures Theatres, Corp. (1954) 347 US 89, 98 L. Ed. 532, 74 S. Ct. 414.

In footnote 6 of the Partmar case, the Court points out that the finding and conclusion of law in support of the

judgment in favor of the defendant were essential to the determination of the plaintiff's claim for possession of the theatre, and that it is only when a finding of law or fact is not necessary for a judgment, that the prevailing party may not appeal and the finding does not form the basis for collateral estoppel.

Footnote 6, Partmar Case: While Partmar did not appeal, it might have. The finding and conclusion of law just quoted were essential to the determination of Paramount's claim for possession of the theatre. Paramount's position after this court's reversal of the franchise portion of the New York decree, was that the agreements were invalid under the Federal Anti-Trust Statutes as a product of an illegal conspiracy. It is only when a finding of law or fact is not necessary for a decree that the prevailing party may not appeal, and the finding does not form the basis for collateral estoppel. This is shown by the case cited to support the statement as to appeal in Lindheimer v. Illinois Bell, New York Telephone v. Maltbie, Electrical Fillings Corp. v. Thomas. Electrical Fillings Corp. v. Thomas stated the practice negatively. "A party may not appeal . . . findings . . . not necessary to support the decree." Professor Scott, *Collateral Estoppel By Judgment*, 56 Harvard Law Review-I, concurs in this view. Re Statements, Judgments, §68 Reeves "(1) Where a question of fact essential to the judgment is actually litigated and determined by a valid and final judgment, determination is conclusive between the parties in a subsequent action, on a different cause of action, except as stated in §69, 71 & 72". Section 69(2) "Where a party to a judgment cannot obtain the decision of an appellate court because the matter determined against him is immaterial or moot, the judgment is not conclusive against him in a subsequent action on a different cause of action." Is immaterial because the conspiracy determination was essential for Paramount's defense.